162 U.S. 684

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 573.

WARREN F. PUTNAM, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW HAMPSHIRE.

FILED MARCH 28, 1895.

(15,846.)

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of New Hampshire, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, in a cause entitled United States against Warren F. Putnam, a manifest error hath happened, to the great damage of the said Warren F. Putnam, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the fifth day of February, in the year of our Lord one thousand eight hundred and ninety-five.

Seal of Circuit Court, New Hampshire.

FREMONT E. SHURTLEFF,
Clerk of the Circuit Court of the United States, District of New Hampshire.

Allowed by—
EDGAR ALDRICH,
Presiding Judge.

The above is to operate as a stay of proceedings pending this writ.
EDGAR ALDRICH,
Presiding Judge.

b CIRCUIT COURT OF THE UNITED STATES, *District of New Hampshire,* } *ss:*

And now here the judges of the circuit court of the United States in and for the district of New Hampshire make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, Fremont E. Shurtleff, clerk of said circuit court of the United States in and for the district of New Hampshire, have hereto set my hand and affixed the seal of said court this second day of March, A. D. 1895.

Seal of Circuit Court, New Hampshire.

FREMONT E. SHURTLEFF, *Clerk.*

1 UNITED STATES OF AMERICA, *District of New Hampshire*, } ss:

At a circuit — of the United States for the first circuit, begun and holden at Concord, within and for the district of New Hampshire, on Monday, the eighth day of October, in the year of our Lord one thousand eight hundred and ninety-four, before the Honorable Edgar Aldrich, district judge, presiding.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 479 Criminal Docket.

This cause was remitted from the district court of the United States within and for the district of New Hampshire to this circuit court, the record in the said district court being as follows:

Record in District Court.

(Filed Oct. 8, 1894.)

UNITED STATES OF AMERICA, *District of New Hampshire*, } ss:

At a district court of the United States begun and holden at Portsmouth, within and for the district of New Hampshire, on the third Tuesday, to wit, the eighteenth day, of September, in the year of our Lord one thousand eight hundred and ninety-four, before the Honorable Nathan Webb, district judge for the district of Maine, duly designated to hold said term.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 232.

2 UNITED STATES OF AMERICA:

District Court of the United States of America for the District of New Hampshire.

At a district court of the United States of America for the district of New Hampshire, begun and holden at Concord, within and for said district, on the nineteenth day of December, in the year of our Lord one thousand eight hundred and ninety-three.

The jurors for the United States of America within and for the said district of New Hampshire upon their oath present that Warren F. Putnam, late of Exeter, in said district of New Hampshire, to wit, on the twenty-sixth day of July, in the year of our Lord eighteen hundred and ninety-three, at Exeter, in said district, and within the jurisdiction of this court, he, the said Warren F. Putnam, being then and there president of a certain national banking association then and there known and designated as the National Granite State bank, which said association had been theretofore created and or-

ganized under and by virtue of the laws of the United States of America and which said association was then and there acting and carrying on a national banking business at said Exeter under the laws aforesaid, did, by virtue of his said office and employment and while he was so employed and acting as such president as aforesaid, receive and take into his possession certain funds and credits, to wit:

Sixteen bonds and written obligations of the Leavenworth Electric Railway Company of the kind called six per cent. first-mortgage gold bonds, of the denomination and value of one thousand
3 dollars each.

Eight bonds and written obligations of the Leavenworth Electric Railway Company of the kind called six per cent. first-mortgage gold bonds, of the denomination and value of five hundred dollars each.

Then and there being the property of the said association and which he held for and in the name and on account of the said association, and did then and there wilfully and unlawfully and with intent to injure and defraud the said association embezzle the said bonds and written obligations and convert them to his own use, against the peace and dignity of the said United States and contrary to the form of the statute in such case made and provided.

Second Count.

And the jurors aforesaid upon their oath aforesaid do further present that Warren F. Putnam, late of Exeter, in said district of New Hampshire, to wit, on the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and ninety-three, at Exeter, in said district, and within the jurisdiction of this court, he, the said Warren F. Putnam, being then and there the president of a certain national banking association then and there known and designated as the National Granite State bank, which said association had been theretofore created and organized under and by virtue of the laws of the United States of America and which said association was then and there acting and carrying on a national banking business at said Exeter under the laws aforesaid, did then and there unlawfully and wilfully and without the knowledge and consent of said association and with intent to injure and defraud
4 said association, abstract and convert to his own use certain funds and credits of the property of said association, to wit, sixteen bonds and written obligations of the Leavenworth Electric Railway Company of the kind called six per cent. first-mortgage gold bonds, of the denomination and value of one thousand dollars each.

Eight bonds and written obligations of the Leavenworth Electric Railway Company of the kind called six per cent. first-mortgage gold bonds, of the denomination and value of five hundred dollars each, against the peace and dignity of the said United States and contrary to the form of the statute in such case made and provided.

Third Count.

And the jurors aforesaid upon their oath aforesaid do further present that Warren F. Putnam, late of Exeter, in said district of New Hampshire, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and ninety-three, and at various times between that date and the fifteenth day of July, in the year of our Lord one thousand eight hundred and ninety-three, at said Exeter and within the jurisdiction of this court, he, the said Warren F. Putnam, being then and there president of a certain national banking association then and there known and designated as the National Granite State bank, which said association had been theretofore created and organized under and by virtue of the laws of the United States of America and which said association was then and there acting and carrying on a national banking business in said Exeter under the laws aforesaid, did, by virtue of such his employment and whilst he was employed
5 as aforesaid, receive and take into his possession large sums of money and funds and credits to and for the said National Granite State bank, to wit, the sum of fifty thousand dollars, for and in the name and on account of said association, and the said Warren F. Putnam at the times aforesaid and the place aforesaid did unlawfully embezzle and convert to his own use certain sums of said monies, funds, and credits of the said National Granite State bank, to wit, the sum of forty thousand dollars, a more particular description of the monies, funds, and credits so embezzled as aforesaid being to the jurors aforesaid unknown, with intent then and there and thereby to injure and defraud the said National Granite State bank, against the peace and dignity of the said United States and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the jurors aforesaid upon their oath aforesaid do further present that Warren F. Putnam, late of Exeter, in said district of New Hampshire, to wit, on the fourth day of February, in the year of our Lord one thousand eight hundred and ninety-three, at Exeter, in said district, and within the jurisdiction of this court, he, the said Warren F. Putnam, being then and there the president of a certain national banking association then and there known and designated as the National Granite State bank, which said association had been theretofore created and organized under and by virtue of the laws of the United States of America and which said association was then and there acting and carrying on a national banking business at said Exeter under the laws aforesaid, did, by
6 virtue of his said office and employment and while he was so employed and acting as such president as aforesaid, receive and take into his possession certain funds and credits, to wit, a check, to wit, one order dated the seventeenth day of January, in the year of our Lord one thousand eight hundred and ninety-three, drawn by the American Loan & Trust Company on Messrs. Winslow, Lanier & Company, of New York, to the order of

W. F. Putnam, for the payment of five thousand dollars and of the value of five thousand dollars, then and there being the property of said National Granite State Banking Association, and which the said Warren F. Putnam, as president as aforesaid, held for and in the name and on account of the said national banking association, and did then and there wilfully and unlawfully and with intent to injure and defraud the said association embezzle the said check, to wit, order, and convert the same to his own use, against the peace and dignity of the said United States and contrary to the form of the statute in such case made and provided.

Fifth Count.

And the jurors aforesaid upon their oath aforesaid do further present that Warren F. Putnam, late of Exeter, in said district, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety-three, at Exeter, in said district, and within the jurisdiction of this court, was president of a certain national banking association, to wit, the National Granite State Bank of said Exeter, which said association had been theretofore duly organized and established and was then and there duly and legally existing and doing business as a national bank-
7 ing association under and by virtue of the laws of the United States of America, and that he, the said Warren F. Putnam, did, by virtue of his said office and employment and while he was employed and acting as such president as aforesaid, receive and take into his possession certain funds and credits of said association—that is to say, he, the said Warren F. Putnam, as president as aforesaid, on, to wit, the said twenty-third day of January, at Boston, in the district of Massachusetts, as president as aforesaid and in the name of the said National Granite State bank, did draw, execute, and sign a certain check, to wit, order on the National Bank of Redemption of said Boston and upon the credit of said National Granite State bank with said National Bank of Redemption, payable to the order of the American Loan & Trust Company, of said Boston, for five thousand dollars, and then and there, at said Boston, did deliver the said check to said loan & trust company and then and there, at said Boston, receive from said loan & trust company for and on account of said check a certain other check, to wit, a check drawn by said loan & trust company on Messrs. Winslow, Lanier & Company, of New York, dated said twenty-third day of January and payable to the order of W. F. Putnam, for five thousand dollars and of the value of five thousand dollars, which said last-named check was then and there, at said Boston, taken, received, and held by said Warren F. Putnam by virtue of his said office and employment as president as aforesaid, and which was then and there, at said Boston, the property of said National Granite State Banking Association, and that he, the said Warren F. Putnam, president as aforesaid, did then and there, to wit, at said Boston, on said twenty-third day of January, transfer and pay out said check for his own

use, benefit, and advantage, and thereafter, to wit, during all
8 the time from said twenty-third day of January until the fifth day of February, in the year of our Lord one thousand eight hundred and ninety-three, at said Exeter, being during all the time aforesaid president as aforesaid, did wilfully and unlawfully omit and fail to account for the checks aforesaid to said National Granite State Banking Association and did during all the time aforesaid wilfully and unlawfully conceal from said association, to wit, the National Granite State Banking Association, that he had drawn said first-named check as aforesaid and that he had received and paid out said last-named check as aforesaid, and on, to wit, the fourth day of February, in the year of our Lord one thousand eight hundred and ninety-three, at said Exeter, did knowingly and wilfully deny to said association, to wit, the National Granite State Banking Association, that he had received said last-named check; so the jurors aforesaid upon their oath aforesaid do present that said Warren F. Putnam, president as aforesaid, at said Exeter, on, to wit, said fourth day of February, in manner and form aforesaid, did wilfully and unlawfully and with intent to injure and defraud the said association embezzle and convert to his own use monies, funds, and credits of the property of said association, to wit, the said check of the American Loan & Trust Company on said Messrs. Winslow, Lanier & Company, to the order of said W. F. Putnam, for the payment of five thousand dollars and of the value of five thousand dollars, against the peace and dignity of the said United States and contrary to the form of the statute in such case made and provided.

Sixth Count.

And the jurors aforesaid upon their oath aforesaid do further
9 present that Warren F. Putnam, late of Exeter, in said district of New Hampshire, to wit, on the eighth day of May, in the year of our Lord one thousand eight hundred and ninety-three, at Exeter, in said district, and within the jurisdiction of this court, he, the said Warren F. Putnam, being then and there the president of a certain national banking association then and there known and designated as the National Granite State bank, which said association had been theretofore created and organized under and by virtue of the laws of the United States of America and which said association was then and there acting and carrying on a national banking business at said Exeter under and by virtue of the laws aforesaid, did, by virtue of his said office and employment and while he was so employed and acting as such president as aforesaid, receive and take into his possession certain monies and funds, to wit, six hundred dollars in money, a more particular description of which is to the jurors unknown, then and there being the property of said National Granite State Banking Association, and which the said Warren F. Putnam, as president as aforesaid, held for and in the name and on account of the said national banking association, and did then and there wilfully and unlawfully and with intent to injure and defraud the said association embezzle said

monies and funds of the amount and value of six hundred dollars and convert the same to his own use, against the peace and dignity of the said United States and contrary to the form of the statute in such case made and provided.

Seventh Count.

And the jurors aforesaid upon their oath aforesaid do further present that Warren F. Putnam, of Exeter, in said district,
10 on, to wit, the first day of January, in the year of our Lord one thousand eight hundred and ninety-three, and at various times between that date and the fifteenth day of July, in the year of our Lord one thousand eight hundred and ninety-three, at Exeter, in said district, and within the jurisdiction of this court, he, the said Warren F. Putnam, being then and there president of a certain national banking association then and there known and designated as the National Granite State bank, which said association had been theretofore created and organized under the laws of the United States of America and which said association was then and there acting and carrying on a national banking business in Exeter aforesaid, did then and there unlawfully and wilfully and without the knowledge and consent of said association and with intent to injure and defraud said association abstract and convert to his own use the monies, funds, and credits of the property of said association, to wit, forty thousand dollars of the monies, funds, and credits of said association, a more particular description of which monies, funds, and credits is to the said jurors unknown, against the peace and dignity of the said United States and contrary to the form of the statute in such case made and provided.

Eighth Count.

And the jurors aforesaid upon their oath aforesaid do further present that Warren F. Putnam, late of Exeter, in said district of New Hampshire, to wit, on the seventh day of April, in the year of our Lord one thousand eight hundred and ninety-three, and thence continually until, to wit, the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, at
11 said Exeter and within the jurisdiction of this court, was president of a certain national banking association, to wit, the National Granite State bank, which said association had been theretofore duly organized and established and was then and there duly and legally existing and doing business at said Exeter as a national banking association under and by virtue of the laws of the United States of America, and that he, the said Warren F. Putnam, as president as aforesaid, on, to wit, the said seventh day of April, at Boston, in the district of Massachusetts, and in the name of said National Granite State bank, did draw, execute, and sign a certain check, to wit, order, on the National Bank of Redemption of said Boston and upon the credit of said National Granite State bank with said National Bank of Redemption, payable to H. N. Smith, of said Boston, for five thousand dollars, and then and there, at said Boston, on said seventh day of April, did deliver the said check to

the said H. N. Smith, and then and there, on said seventh day of April and at said Boston, receive from said Smith for and on account of said check the check of said Smith for five thousand dollars on the Market National bank, of said Boston, and payable to the order of W. F. Putnam, which last-named check he, the said Warren F. Putnam, president as aforesaid, at said Boston, on said seventh day of April, did convert to his own use, all, to wit, the drawing, signing, and executing and delivery of the first-named check as aforesaid and the conversion of the last-named check as aforesaid, being without the knowledge and consent of the said association, to wit, the National Granite State Banking Association, and with intent on the part of him, the said Warren F. Putnam, president as aforesaid, to injure and defraud the said National Granite State Banking Association.

12 And the jurors aforesaid upon their oath aforesaid do further present that said Warren F. Putnam, president as aforesaid, at the time he drew said first-named check to H. N. Smith as aforesaid, then and there, on said seventh day of April and at said Boston, well knew that the said check would and intended that the same should in the course of banking be presented to the National Granite State Banking Association at said Exeter for payment, and be there, to wit, at said Exeter, paid by said National Granite State Banking Association, and the monies, funds, and credits of said National Granite State Banking Association be there, to wit, at said Exeter, withdrawn by means of and in payment of said first-named check.

And the jurors aforesaid upon their oath aforesaid do further present that said first-named check was in the course of banking presented to the said National Granite State Banking Association at said Exeter on, to wit, the eighth day of May, in the year of our Lord one thousand eight hundred and ninety-three, for payment, and was then and there, at said Exeter and on said eighth day of May, paid by said National Granite State Banking Association, and then and there, at said Exeter and on said eighth day of May, the monies, funds, and credits of said National Granite State Banking Association were withdrawn and abstracted by means and in payment of said first-named check.

So the jurors aforesaid upon their oath aforesaid do present that the said Warren F. Putnam, as president aforesaid, at Exeter aforesaid, on, to wit, the said eighth day of May, and in the manner and form aforesaid, without the consent of said National Granite State Banking Association and with intent to injure and defraud

13 said National Granite State Banking Association, did wilfully and unlawfully abstract and convert to his own use the monies, funds, and credits of said association, to wit, the monies, funds, and credits with which the first-named check was paid by said National Granite State Banking Association as aforesaid of the amount and value of five thousand dollars, a more particular description of which said monies, funds, and credits is to the jurors unknown, against the peace and dignity of the said United States and contrary to the form of the statute in such case made and provided.

Ninth Count.

And the jurors aforesaid upon their oath aforesaid do further present that Warren F. Putnam, late of Exeter, in said district of New Hampshire, to wit, on the eighth day of May, in the year of our Lord one thousand eight hundred and ninety-three, at said Exeter and within the jurisdiction of this court, he, the said Warren F. Putnam, being then and there president of a certain national banking association then and there known and designated as the National Granite State bank, which said association had been theretofore created and organized under and by virtue of the laws of the United States of America and which said association was then and there acting and carrying on a national banking business in Exeter aforesaid, did then and there unlawfully and wilfully and without the knowledge and consent of said association and with intent to injure and defraud said association, abstract and convert to his own use monies, funds, and credits of the property of said association of the amount and value of three thousand dollars, a more par-
14 ticular description of which said monies, funds, and credits is to the jurors unknown, against the peace and dignity of the said United States and contrary to the form of the statute in such case made and provided.

Tenth Count.

And the jurors aforesaid upon their oath aforesaid do further present that Warren F. Putnam, of Exeter, in said district, on, to wit, the 1st day of January, in the year of our Lord one thousand eight hundred and ninety-two, and at various times between that date and the 15th day of March, in the year of our Lord one thousand eight hundred and ninety-two, at Exeter, in said district, and within the jurisdiction of this court, he, the said Warren F. Putnam, being then and there vice-president of a certain national banking association then and there known and designated as the National Granite State bank, which said association had been theretofore created and organized under the laws of the United States of America and which said association was then and there acting and carrying on a national banking business in Exeter aforesaid, did then and there unlawfully and wilfully and without the knowledge and consent of said association and with intent to injure and defraud said association abstract and convert to his own use the monies, funds, and credits of the property of said association, to wit, sixteen thousand dollars of the monies, funds, and credits of said association, a more particular description of which monies, funds, and credits is to the said jurors unknown, against the peace and dignity of the said United States and contrary to the form of the statute in
15 such case made and provided.

A true bill.

CHARLES H. STONE,
Foreman of the Grand Jury.
JAMES W. REMICK,
United States Attorney for the District of New Hampshire.

This indictment was presented by the grand jury at the December term of this district court, A. D. 1893, and thereafterwards, to wit, on the fourteenth day of February, A. D. 1894, the respondent, the said Warren F. Putnam, was set to the bar, and, waiving the reading of said indictment and reserving all rights to object by demurrer or otherwise, said that he was not guilty thereof, and it was ordered that all objections, if any, to the said indictment should be filed by said respondent on or before the fifteenth day of March, A. D. 1894, and at the said term the following demurrers were filed:

16 District Court of the United States, District of New Hampshire, December Term, 1893.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 232.

Demurrer of Warren F. Putnam to the 1st Count of said Indictment.

(Filed in district court March 9, 1894.)

And the said Warren F. Putnam in his own proper person cometh into court here, and, having heard the said indictment read and having heretofore pleaded thereto, now, by leave of court, withdraws his said plea and demurs to the 1st count of said indictment and says that the said 1st count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that the said Warren F. Putnam is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the said Warren F. Putnam prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said count of said indictment specified.

WARREN F. PUTNAM,
By his att'ys, STREETER, WALKER & CHASE.

17 District Court of the United States, District of New Hampshire, December Term, 1893.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 232.

Demurrer of Warren F. Putnam to the 2nd Count of said Indictment.

(Filed in district court March 9, 1894.)

And the said Warren F. Putnam in his own proper person cometh into court here, and, having heard the said indictment read and having heretofore pleaded thereto, now, by leave of court, withdraws

his said plea and demurs to the 2nd count of said indictment and says that the said 2nd count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that the said Warren F. Putnam is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the said Warren F. Putnam prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said count of said indictment specified.

WARREN F. PUTNAM,
By his att'ys, STREETER, WALKER & CHASE.

18 District Court of the United States, District of New Hampshire, December Term, 1893.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 232.

Demurrer of Warren F. Putnam to the 3rd Count of said Indictment.

(Filed in district court March 9, 1894.)

And the said Warren F. Putnam in his own proper person cometh into court here, and, having heard the said indictment read and having heretofore pleaded thereto, now, by leave of court, withdraws his said plea and demurs to the 3rd count of said indictment and says that the said 3rd count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that the said Warren F. Putnam is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the said Warren F. Putnam prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said count of said indictment specified.

WARREN F. PUTNAM,
By his att'ys, STREETER, WALKER & CHASE.

19 District Court of the United States, District of New Hampshire, December Term, 1893.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 232.

Demurrer of Warren F. Putnam to the 4th Count of said Indictment.

(Filed in district court March 9, 1894.)

And the said Warren F. Putnam in his own proper person cometh into court here, and, having heard the said indictment read and

having heretofore pleaded thereto, now, by leave of court, withdraws his said plea and demurs to the 4th count of said indictment and says that the said 4th count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that the said Warren F. Putnam is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the said Warren F. Putnam prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said count of said indictment specified.

WARREN F. PUTNAM,
By his att'ys, STREETER, WALKER & CHASE.

20 District Court of the United States, District of New Hampshire, December Term, 1893.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 232.

Demurrer of Warren F. Putnam to the 5th Count of said Indictment.

(Filed in district court March 9, 1894.)

And the said Warren F. Putnam in his own proper person cometh into court here, and, having heard the said indictment read and having heretofore pleaded thereto, now, by leave of court, withdraws his said plea and demurs to the 5th count of said indictment and says that the said 5th count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that the said Warren F. Putnam is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the said Warren F. Putnam prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said count of said indictment specified.

WARREN F. PUTNAM,
By his att'ys, STREETER, WALKER & CHASE.

21 District Court of the United States, District of New Hampshire, December Term, 1894.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 232.

Demurrer of Warren F. Putnam to the 6th Count of said Indictment.

(Filed in district court March 9, 1894.)

And the said Warren F. Putnam in his own person cometh into court here, and, having heard the said indictment read and having

heretofore pleaded thereto, now, by leave of court, withdraws his said plea and demurs to the 6th count of said indictment and says that the said 6th count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that the said Warren F. Putnam is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the said Warren F. Putnam prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said count of said indictment specified.

WARREN F. PUTNAM,
By his att'ys, STREETER, WALKER & CHASE.

22 District Court of the United States, District of New Hampshire, December Term, 1893.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 232.

Demurrer of Warren F. Putnam to the 7th Count of said Indictment.

(Filed in district court March 9, 1894.)

And the said Warren F. Putnam in his own proper person cometh into court here, and, having heard the said indictment read and having heretofore pleaded thereto, now, by leave of court, withdraws his said plea and demurs to the 7th count of said indictment and says that the said 7th count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that the said Warren F. Putnam is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the said Warren F. Putnam prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said count of said indictment specified.

WARREN F. PUTNAM,
By his att'ys, STREETER, WALKER & CHASE.

23 District Court of the United States, District of New Hampshire, December Term, 1893.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 232.

Demurrer of Warren F. Putnam to the 8th Count of said Indictment.

(Filed in district court March 9, 1894.)

And the said Warren F. Putnam in his own proper person cometh into court here, and, having heard the said indictment read and

having heretofore pleaded thereto, now, by leave of court, withdraws his said plea and demurs to the 8th count of said indictment and says that the said 8th count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that the said Warren F. Putnam is not bound by the law of the land to answer the same and this he is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the said Warren F. Putnam prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said count of said indictment specified.

WARREN F. PUTNAM,
By his att'ys, STREETER, WALKER & CHASE.

24 District Court of the United States, District of New Hampshire, December Term, 1893.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 232.

Demurrer of Warren F. Putnam to the 9th Count of said Indictment.

(Filed in district court March 9, 1894.)

And the said Warren F. Putnam in his own proper person cometh into court here, and, having heard the said indictment read and having heretofore pleaded thereto, now, by leave of court, withdraws his said plea and demurs to the 9th count of said indictment and says that the said 9th count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that the said Warren F. Putnam is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the said Warren F. Putnam prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said count of said indictment specified.

WARREN F. PUTNAM,
By his att'ys, STREETER, WALKER & CHASE.

25 District Court of the United States, District of New Hampshire, December Term, 1893.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 232.

Demurrer of Warren F. Putnam to the 10th Count of said Indictment.

(Filed in district court March 9, 1894.)

And the said Warren F. Putnam in his own proper person cometh into court here, and, having heard the said indictment read and hav-

ing heretofore pleaded thereto, now, by leave of court, withdraws his said plea and demurs to the 10th count of said indictment and says that the said 10th count of said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that the said Warren F. Putnam is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the said Warren F. Putnam prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said count of said indictment specified.

WARREN F. PUTNAM,
By his att'ys, STREETER, WALKER & CHASE.

26 This cause was thence continued to the March term, A. D. 1894, of said district court, when, to wit, on the sixth day of July, A. D. 1894, the Honorable Nathan Webb, district judge for the district of Maine, duly designated to hold said term, sitting.

This cause came on to be heard by the court upon the foregoing demurrers and was fully argued by counsel for the respective parties, and was thence continued to the August term, A. D. 1894, of said district court, when, to wit, on the twenty-eighth day of August, A. D. 1894, the Honorable Nathan Webb, district judge for the district of Maine, duly designated to hold said term, sitting:

It is ordered that the demurrers be sustained as to the third, fifth, and eighth counts; that said third, fifth, and eighth counts of said indictment be quashed; that demurrers be overruled as to the first, second, fourth, sixth, seventh, ninth, and tenth counts; that said first, second, fourth, sixth, seventh, ninth, and teuth counts be held good and sufficient, and that said respondent plead further thereto.

This cause was thence continued to the present term, to wit, the September term, A. D. 1894, of said district court, when on, to wit, the eighteenth day of September, A. D. 1894, the respondent, Warren F. Putnam, is again set to the bar, and, waiving the reading of the indictment, says that he is not guilty of the charges alleged in the first, second, fourth, sixth, seventh, ninth, and tenth counts, respectively, and on the fourth day of October, A. D. 1894, the United States attorney makes the following motion:

27 *Motion to Remit to Circuit Court.*

(Filed in district court Mar. 4, 1894.)

U. S. District Court, District of New Hampshire.

THE UNITED STATES
v.
WARREN F. PUTNAM.

And now comes Oliver E. Branch, district attorney of New Hampshire, and says that the public good requires the above cause be remitted into the term of the circuit court for said district to be

held at Concord, N. H., on the 8th day of October, 1894, and so moves.

OLIVER E. BRANCH, *U. S. Att'y.*

And thereupon, upon the back of said motion, the court, Honorable Nathan Webb, district judge for the district of Maine, duly designated to hold said term, sitting, endorsed the following order:

Order of Court.

(Filed Oct. 4, 1894.)

Motion granted. Ordered that this indictment be remitted as prayed.

NATHAN WEBB,
Dist. Judge.

A true record.
Attest: FREMONT E. SHURTLEFF, *Clerk.*

UNITED STATES OF AMERICA, }
District of New Hampshire, } *ss:*

Certificate of Clerk.

I, Fremont E. Shurtleff, clerk of the district court of the United States for the district of New Hampshire, hereby certify that the foregoing is a true record in the cause of The United States
28 *v.* Warren F. Putnam in said district court, and that the indictment, the demurrers to counts one to ten, inclusive, and the motion of the United States attorney, included in said record, are the original papers filed in said district court; which original papers, with the original recognizances, capias, arguments on demurrers, subpœnas for witnesses, and warrants to commit, being all recognizances, processes, and proceedings pending in the case in said district court, are herewith transmitted to the circuit court of the United States for the district of New Hampshire in accordance with section 1037 of the Revised Statutes of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court this eighth day of October, in the year of our Lord one thousand eight hundred and ninety-four.

[L. S.] FREMONT E. SHURTLEFF, *Clerk.*

This cause, remitted as aforesaid, is duly entered at the present term; and thereupon, to wit, on the twentieth day of December, A. D. 1894, it appearing that the respondent was arraigned and pleaded not guilty to the first, second, fourth, sixth, seventh, ninth, and tenth counts of said indictment, a jury was empaneled and sworn according to law to try the issue, namely: Leavitt D. Sleeper, foreman; Moses Ladd, Herbert E. Dow, Thomas E. Eastman, L. H. Loveland, Jr., Frank P. Piper, George H. Piper, Hiram E. Blake, Fred. G. Richardson, George N. Goodwin, Paine D. Annis, Martin M. Cole.

29 Now, after said jury is empaneled and before the case is opened in behalf of the United States, the attorney for the United States comes and files the following motion in open court:

Motion to Amend Indictment.

(Filed Dec. 20, 1894.)

I move to amend each count in the indictment by inserting after the words "National Granite State bank," as there found in each count, the words "of Exeter."

OLIVER E. BRANCH,
Attorney for the United States.

Which motion is denied.

And thereafter, to wit, on the twenty-seventh day of December, A. D. 1894, the jury empaneled as aforesaid, after hearing all matters and things concerning said issue, return their verdict, and on oath say that said Warren F. Putnam is not guilty on the first count and is guilty on the second and seventh counts of said indictment, and on the fourth, sixth, ninth, and tenth counts of said indictment previously withdrawn from the jury verdicts of not guilty are rendered under direction from the court, because of a variance between the proof and the allegations in said counts as to the locality where the offenses were committed.

Upon motion by counsel for defendant, further time is allowed by the court for filing bill of exceptions, and on, to wit, the thirty-first day of January, A. D. 1894, the following bill of exceptions was allowed in open court:

30 *Defendant's Bill of Exceptions.*

(Filed January 31, 1895.)

An indictment under section 5209 of the Revised Statutes of the United States was returned by the grand jury at the December term, 1893, of the district court of the United States of America for the district of New Hampshire, sitting at Concord, in said district, against Warren F. Putnam, charging him, as president of the National Granite State bank, an alleged national banking association organized under the laws of the United States and carrying on a national banking business at Exeter, in said district of New Hampshire, with embezzlement, abstraction, and conversion to his own use, with intent to injure and defraud the bank, of monies, funds, and credits of said bank. The indictment, when presented by the grand jury, contained 10 counts.

On or about Feb. 14, 1894, the defendant, being arraigned, pleaded not guilty, reserving all rights to object to the form or sufficiency of the indictment by demurrer or otherwise. On or about March 9, 1894, general demurrers were filed by the defendant to each and every count of the indictment. On or about Oct. 8, 1894, after argument upon said demurrers, counts 3, 5, and 8 were quashed, and

counts 1, 2, 4, 6, 7, 9, and 10 were sustained, and the respondent ordered to answer further to said counts.

On Sept. 18, 1894, upon order of the court, the defendant was again arraigned, and thereupon pleaded not guilty.

On Oct. 4, 1894, upon motion of the district attorney and order of the court thereon, the cause was remitted to the October term
31 & 32 of the circuit court for the district of New Hampshire. Trial by jury was had at said October term, in Concord, on December 20, 1894, and various days thereafter.

At the close of the evidence for the prosecution, upon motion of counsel for the defendant, counts 4, 6, and 9 were withdrawn from the consideration of the jury, and, count 10 having been voluntarily withdrawn by the district attorney with consent of the defendant, the case was submitted to the jury on counts 1, 2, and 7.

The jury returned a verdict of guilty on counts 2 and 7 and not guilty on count 1.

On Dec. 11, 1894, the district attorney wrote respondent's counsel as follows:

MANCHESTER, N. H., *Dec.* 11, 1894.

F. S. Streeter, Esq., Concord, N. H.

DEAR SIR: I propose to try Mr. Putnam on the first, second, fourth, sixth, seventh, and ninth counts of the indictment. I do not see that any of them require a specification except the seventh. As to that the items are as follows:

January	17, 1893	$5,000	
"	23, "	5,000	
April	1, "	1,500	
"	1, "	5,000	
"	7, "	600	
"	7, "	672	05
"	7, "	5,000	
"	8, "	100	
"	21, "	2,500	
"	25, "	52	95

All of which sums were drawn by checks to the order of the American Loan & Trust Company of Boston on the National Bank of Redemption.

Also:

April	7, 1893	$50
	April 7, 1893	5,000
33	May 2, 1893	3,000
	" 6, "	3,000
May	6, 1893	2,000

All checks to the order of H. N. Smith on the National Bank of Redemption.

Yours very truly,

O. E. BRANCH,
District Attorney.

The foregoing was not filed with the clerk, but was called to the attention of the court during the trial, and the court said that, while it was not, strictly speaking, a bill of particulars, it should be treated as notice to the defendant of the transactions to be put in issue, and that the evidence should be limited to such transactions or matters reasonably connected therewith.

Early in the trial of the cause the defendant objected to the sufficiency of the indictment and of the proof adduced by the Government, for the reason that the Government offered no evidence to show the existence of a bank authorized to do business by and under the name of the "National Granite State bank," as set out in the indictment. The position of the Government and of the defendant upon this point may be outlined as follows:

The position of the Government was that under this indictment it was competent to show that authority was granted to certain persons to carry on business as a national banking association at Exeter under the name of "The National Granite State Bank of Exeter," and that the association so authorized actually carried on business at the place named under the name of and was gen-
34 erally known as the "National Granite State bank," and that the defendant and the Government had full knowledge of all the facts, and that the respondent was president of such association so doing business.

The position of the defendant was that the indictment and proof were insufficient, on the ground that there was a variance between the name of the bank alleged in the indictment and that indicated by the proof, and that the evidence to show that there was an association at Exeter doing business within the scope of the authority granted to an association by the name the "National Granite State Bank of Exeter," but under a different name, viz., the "National Granite State bank," was immaterial and incompetent, because no evidence was offered to show the existence of a bank under the name of the "National Granite State bank."

The defendant made objections and took exceptions to the proof as it was offered, all of which appear in the bill of exceptions following.

The Government offered in evidence a certificate of the Comptroller of the Currency, dated Dec. 6, 1893, attached to which certificate was an exemplified copy of the original certificate, dated May 15, 1865, authorizing the "National Granite State Bank of Exeter" to do business as a national banking association.

Said certificate and copy are in the following words:

V. H. C., E. M. B., A. R. S.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, } *ss:*

35 Under the provisions of section 884 of the Revised Statutes of the United States I, O. P. Tucker, deputy and acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original copy of the

certificate of the Comptroller of the Currency authorizing the National Granite State Bank of Exeter, N. H., to commence the business of banking May 15, 1865, and of the whole of such original on file and of record in my office.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the Treasury Department, in the city of Washington and District of [L. S.] Columbia, this 6th day of December, A. D. 1893.

O. P. TUCKER,
Deputy and Acting Comptroller of the Currency.

No. 1147.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, *May 15th*, 1865.

Whereas by satisfactory evidence presented to the undersigned it has been made to appear that "the National Granite State Bank of Exeter," in the town of Exeter, in the county of Rockingham and State of New Hampshire, has been duly organized under and according to the requirements of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption
36 thereof," approved June 3, 1864, and has complied with all the provisions of said act required to be complied with before commencing the business of banking under said act:

Now, therefore, I, Freeman Clark, Comptroller of the Currency, do hereby certify that "the National Granite State Bank of Exeter," in the town of Exeter, in the county of Rockingham and State of New Hampshire, is authorized to commence the business of banking under the act aforesaid.

In testimony whereof witness my hand and seal of office this fifteenth day of May, 1865.

(S'g'd) FREEMAN CLARK,
Comptroller of the Currency.

The Government also offered in evidence a certificate of the Comptroller of the Currency, dated Dec. 6, 1893, attached to which certificate was an exemplified copy of the original certificate, dated April 8, 1885, extending the authority of the "National Granite State Bank of Exeter" to do business as a national banking association until April 12, 1905.

Said certificate and copy are in the following words:

V. H. C., E. M. B., A. R. S.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, } ss:

Under the provisions of section 884 of the Revised Statutes of the United States I, O. P. Tucker, deputy and acting Comptroller of the Currency, do hereby certify that the papers hereto attached is a

true and complete copy of the original certificate of the
37 Comptroller of the Currency authorizing the extension of the corporate existence of the National Granite State Bank of Exeter, N. H., until close of business April 12, 1905, and of the whole of such original on file and of record in my office.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the
[L.S.] Treasury Department, in the city of Washington and District of Columbia, this 6th day of December, A. D. 1893.

O. P. TUCKER,
Deputy and Acting Comptroller of the Currency.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *April 8th*, 1885.

Whereas by satisfactory evidence presented to the undersigned it has been made to appear that "the National Granite State Bank of Exeter," in the town of Exeter, in the county of Rockingham and State of New Hampshire, has complied with all the provisions of the "Act of Congress to enable national banking association- to extend their corporate existence, and for other purposes," approved July 12th, 1882:

Now, therefore, I, Henry W. Cannon, Comptroller of the Currency, do hereby certify that "the National Granite State Bank of Exeter," in the town of Exeter, in the county of Rocking-
38 ham and State of New Hampshire, is authorized to have succession for the period specified in its amended articles of association, namely, until close of business on April 12, 1905.

In testimony whereof witness my hand and seal of office
[SEAL.] this 8th day of April, 1885.

H. W. CANNON,
Comptroller of the Currency.

No. 871. No. 1147.

The Government also offered in evidence a certificate of the Comptroller of the Currency, dated August 10, 1869, attached to which certificate was an exemplified copy of the certificate of organization of the "National Granite State Bank of Exeter," dated August 10, 1869.

Said certificate and copy are in the following words:

Organization Certificate.

Compared. F. C. C., N. M.

We, the undersigned, the directors of the Granite State Bank of Exeter, in the State of New Hampshire, hereby declare that the owners of two-thirds of the capital stock of said bank have authorized the directors of said bank to make the necessary organization certificate and to change and convert the said bank into a national

association under the provisions of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3, 1864; and by virtue of said au-
39 thority and in accordance with the provisions and requirements of the forty-fourth section of said act we do hereby make and execute this organization certificate:

First. The name and title of this association shall be the National Granite State Bank of Exeter.

Second. The said association shall be located and continued in the town of Exeter, county of Rockingham and State of New Hampshire, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this association shall be one hundred thousand dollars ($100,000), and the same shall be divided into one thousand shares of one hundred dollars each, as authorized by a vote of the stockholders of the Granite State bank.

Fourth. The name and residence of each of the stockholders of the said Granite State bank, which is to become a national bank under the provisions of the act of Congress aforesaid, and the number of shares of forty dollars each held by each stockholder are as follows:

(In this exhibit a list of the shareholders of the Granite State bank, showing name, residence, and number of shares, is inserted at this point. Said list, not being material to this case, can be omitted.)

Fifth. This certificate is made in order that
5c. rev. stamp, canceled, C. C., Apr. 12, 1863. the said Granite State bank and the stockholders thereof may avail themselves of the advantages of the aforesaid act, and that the said Granate State bank may be changed and converted into a national banking association under the name
40 and title of the National Granite State Bank of Exeter.

In evidence whereof we have hereunto set our hands this twelfth day of April, eighteen hundred and sixty-five.

EDMUND ELLIOT.
WILLIAM W. STICKNEY.
JEREMIAH L. MERRILL.
CHAS. CONNER.
GEORGE G. SMITH.

[5c. rev. stamp, canceled, "C. C., April 12th, 1863."]

STATE OF NEW HAMPSHIRE, *County of Rockingham*, } *ss:*

On this the twelfth day of April, A. D. 1865, personally came before me, a notary public in and of said county, Abner Merrill, Chas. Conner, W. W. Stickney, Edmund Elliot, Jeremiah L. Merrill, and George Smith, directors of the Granite State bank, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.
[SEAL OF NOTARY.] WILLIAM B. MERRILL,
Notary Public.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, } ss:

I certify the foregoing to be a true and complete copy of the original organization certificate of "the Nat'l Granite State B'k of Exeter," with the acknowledgements thereof, now on file and of record in this office, and of the whole of such originals, and that such originals were so filed and recorded on the sixth day of May, A. D. 1865.

41 In testimony whereof I have hereunto subscribed my name and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this 10th day of August, A. D. 1869.

[SEAL.] H. R. HUBBARD,
Comptroller of the Currency.

The Government also offered in evidence the original certificate of the Comptroller of the Currency, dated April 8, 1885, authorizing the "National Granite State Bank of Exeter" to do business as a national banking association until April 12, 1905.

Said certificate and copy *is* in the following words:

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *April 8th*, 1885.

Whereas by satisfactory evidence presented to the undersigned it has been made to appear that "the National Granite State Bank of Exeter," in the town of Exeter, in the county of Rockingham and State of New Hampshire, has complied with all the provisions of the "Act of Congress to enable national banking associations to extend their corporate existence, and for other purposes," approved July 12th, 1882:

Now, therefore, I, Henry W. Cannon, Comptroller of the Currency, do hereby certify that "the National Granite State Bank of Exeter," in the town of Exeter, in the county of Rockingham and State of New Hampshire, is authorized to have succession for the

42 period specified in its amended articles of association, namely, until close of business on April 12, 1905.

[L. S.] In testimony whereof witness my hand and seal of office this 8th day of April, 1885.

H. W. CANNON,
Comptroller of the Currency.

No. 1147.

Against the defendant's objection the four certificates above described were admitted *de bene* pending a motion made by the district attorney to amend the indictment, and the defendant excepted to each certificate as it was offered and admitted upon the grounds—

That it was improper to admit evidence *de bene* in a case of this kind, and also on the ground of variance between the allegations of the indictment and the proof contained in the certificates of authorization as to the name of the bank, of which the defendant was president; also upon the ground of variance between the allegation and the proof as to ownership of the property stated in the indictment; also that the evidence had no tendency to prove the allegations of the indictment referring to the "National Granite State bank."

After denying the motion to amend the court instructed the jury that the certificates could only be considered upon the question whether there was a national banking association at Exeter and as tending to show the character of the business which the association was authorized to do, and to this instruction the respondent objected.

43 CHARLES E. BYINGTON, witness for the prosecution, testified that he was connected with the National Granite State bank, first as clerk and as cashier, from 1878 to the date of the suspension of the bank, on or about July 27, 1893.

On direct examination by Mr. Branch the following testimony was given:

(Verbatim.)

Q. I wish you would look at the books now shown you and state if you know what they are.

A. (Pointing to books.) This is a record of stockholders; this also is a record of stockholders, and this is a directors' record.

Q. Of what?

A. Of the National Granite State bank.

Q. What is the other book which is now shown you (handing witness book)?

A. It is a directors' record of the National Granite State bank.

Q. I wish you would turn to the record containing the original organization of the bank.

A. That is it.

Mr. BRANCH: I offer this.

Admitted *de bene*.

Mr. Streeter objects and excepts on the ground that it is improper to admit evidence *de bene* in a case of this kind.

And also on the ground of variance between the allegations of the indictment and the proof as to the name of the bank, of which the defendant was president; also upon the ground of variance between the allegation and the proof as to ownership of the property stated in the indictment.

44 That the evidence has no tendency to prove the allegations of the indictment referring to the "National Granite State bank."

The witness then read "the name and title of the association into

which said Granite State bank is to be changed and converted shall be the National Granite State Bank of Exeter."

Against defendant's objection Mr. Branch reads from the stockholders' record certain sections entitled in said record "By-laws of the National Granite State bank." The sections read were sections 1, 3, 6, and 7. Said sections related to the annual meetings and record thereof, the officers of the bank, the duties and liabilities of the cashier, and the authority and duties of the directors.

Section 6 is as follows:

"SECTION 6. The cashier of this bank shall be responsible for all the monies, funds, and valuables of the bank, and shall give bond, with security, to be approved by the board, in the penal sum of twenty thousand dollars, conditioned for the faithful and honest discharge of his duties as such cashier, and that he will faithfully apply and account for all such monies, funds, and valuables and deliver the same on proper demand to the order of the board of directors of this bank or to the person or persons authorized to receive them."

Mr. Branch read from the directors' records as follows:

"At a meeting of the directors of the National Granite State bank held on the 13th day of June, 1867, * * * the foregoing by-laws were presented and read by the cashier, and, on motion of Mr. J. L. Merrill, unanimously adopted, etc."

Also from page 16:

"The National Granite State bank. At a meeting of the directors of the National Granite State bank held this day, etc."

The COURT: What is the object of this?

45 Mr. BRANCH: It is to show that the bank did business under the name set out in the indictment.

Defendant excepted to each quotation from the records as above given on the ground that such evidence was immaterial and incompetent, inasmuch as no evidence had been offered to show the existence of a bank named "the National Granite State bank," as described in the indictment.

Against defendant's objection, the following papers and documents were introduced in evidence by the Government to show that there was a bank at Exeter doing business under the name of the "National Granite State bank." The following were identified by the witness Charles E. Byington as used by the banking association at Exeter with which he was connected as clerk and as cashier. Said papers and documents were put into the case as exhibits and marked by the clerk as such. Said exhibits are as follows:

Exhibit 3. Deposit ticket, printed.
4. Small envelope, printed.
5. Postal card, printed.
6. Stamped envelope, printed.
7. Postal card, printed.
9. Envelope, printed, used in correspondence with office of comptroller.

10. Envelope, printed, used to send funds to reserve agent.
11. Letter-head, printed.
12. Letter-head, printed.
13. Letter-head, printed, on which was written promissory note signed by defendant in his personal capacity.
14. Letter-head, printed, on which was written a receipt in defendant's handwriting.
15. Deposit slip, printed.
16. Two proxies, printed, for stockholders' meetings, with blanks filled out in defendant's handwriting.

The following papers and documents were produced and identified by Arthur O. Fuller, witness for the prosecution, as received by him with the other papers and documents of the bank of which he was appointed receiver on Oct. 9, 1893:

Exhibit 41. Two executions, dated Jan. 31, 1871, and 1872. The headings showing title of case were admitted.
Stockholders' records containing printed notices of annual meetings of 1876, 1877, and 1879 to 1893, inclusive.

" 41½. Pass book "National Granite State bank, Exeter, New Hampshire, an account with Arthur O. Fuller, chairman," in use Dec. 13, 1890, to Feb. 2, 1891.

" 42 and 43. Time notes to order of "National Granite State bank," dated respectively May 24 and May 25, 1892, signed by Lexington Hydraulic and Manufacturing Company.

" 44. Receipt, dated Jan. 20, 1890, given by Arther O. Fuller to "National Granite State bank."

" 45 and 51. Letters of the cashier of National Bank of the Redemption to C. E. Byington, cashier of "the National Granite State bank."

Exhibit 46. Personal mortgage, dated Oct. 21, 1890, Hilliard to "National Granite State bank."

" 47. Declaration of trust, dated Jan. 30, 1890, signed by Folsom in favor of "National Granite State bank."

" 48. Blank check, printed, on back of which written receipt, dated Aug. 4, 1891, A. O. Fuller to "National Granite State bank."

" 49. Check, dated May 16, 1893, drawn by W. F. Putnam on "National Granite State bank."

" 50. Check, dated July 6, 1892, drawn by C. H. Gilman on "National Granite State bank."

" 52. Letter, H. N. Smith to Byington, cashier of "the National Granite State bank."

" 53. Letter, dated June 21, 1893, American Loan & Trust Co. to "National Granite State bank."

" 54. Promissory note protested for benefit of "National Granite State bank," by C. E. Byington, notary public.

Arthur O. Fuller, witness for the prosecution, also read from records of stockholders of the bank of which he was appointed receiver the following notice:

"The annual meeting of the stockholders of the National Granite State bank will be held at the banking-rooms on Tuesday, Jan. 11, 1876, at 2 o'clock p. m., for the choice of directors and the transaction of any other business that may legally come before said meeting.

W. F. PUTNAM, *Cashier.*

Exeter, Dec. 9, 1875."

The notices of the annual meetings for 1877 and from
48 1879 to 1893, inclusive, were also read. These notices were substantially the same, and the bank was described therein by the name National Granite State bank.

The Government introduced the foregoing evidence as tending to show the name under which the association of which the respondent was president was doing business and for the purpose of showing the nature and the locality of the business; and the court said: "I will say to you, gentlemen, that the only effect of this evidence is its bearing upon the name of the bank, so you need not trouble yourselves to remember anything else."

In each of the above-described papers and documents the bank therein referred to was designated by the words "National Granite State bank." There was also evidence in the case tending to show that the bank in some instances used the name "the National Granite State Bank of Exeter" in connection with its business. The defendant objected and excepted to each paper and document as it was put in evidence, on the ground that it was incompetent and immaterial, inasmuch as no evidence had been offered to show the existence of a bank named the "National Granite State bank," as described in the indictment.

The witness Byington testified that the bank of which Putnam was president and which did business at Exeter issued bills which it obtained from the Treasury Department at Washington; that it forwarded its mutilated currency to the comptroller for redemption; made reports to the Treasury Department; was examined by national bank examiners, and had bonds deposited with the
49 Treasury Department at Washington on which it received interest from Washington quarterly.

Against the defendant's exception the Government was permitted to show that there was no other national bank located in Exeter except the National Granite State at the time it suspended and at the time that the indictment was found; that Putnam was connected with no other bank there or elsewhere; that the banks in Exeter were the Union Five Cent savings bank and the Squamscott savings bank; that the banking business carried on at Exeter under the name of the National Granite State bank was that of a national bank, and that such business was done under the authority derived from the Comptroller of the Currency.

The foregoing evidence relating to the name of the bank was ad-

mitted for the purpose of showing that there was an association at Exeter, of which the respondent was president, carrying on the business of a national bank under the name of the National Granite State bank and acting within the general scope of authority conferred by the certificates of authorization.

The certificates of authorization and organization referred to in this bill of exceptions were the only certificates of authorization and organization introduced in evidence by the Government and the only certificates issued to the association of which the respondent was president.

Against the defendant's objection C. E. Byington, witness for the prosecution, on direct examination, was allowed to state what
50 other banks besides the bank of which he was cashier were doing business at Exeter at the time of the suspension and also at the time the indictment was returned by the grand jury, and to give the names thereof. The defendant excepted on the ground that the evidence was incompetent and immaterial.

Against defendant's objection the Government was allowed to introduce in evidence in support of the seventh count fifteen checks drawn in Boston by the defendant as president on the National Bank of Redemption at Boston, which was the Boston correspondent of the bank of which Putnam was president. All these checks were dated at Boston, were payable to the order of parties doing business in Boston, and were duly paid in Boston by the National Bank of the Redemption through the Boston clearing-house. These checks were dated on several dates, extending from Jan. 17 to May 6, 1893, both inclusive, and amounted in the aggregate to thirty-six thousand dollars. The following is a copy of one of said checks:

"BOSTON, *Jan.* 17, 1893. No. —.

National Bank of Redemption

Pay to the order of American Loan & Trust Co. $5,000, five thousand dollars.

THE NATIONAL GRANITE STATE
BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*

85 Devonshire, corner of Water St."

Indorsements: "Pay only through clearing-house, Jan. 18, 1893, to the Third National Bank of Boston. F. S. Davis, cashier." "For deposit only, to credit of American Loan & Trust Co., Boston, Mass. Jan. 17, 1893. N. W. Jordan, actuary."

The other checks are of the same tenor, and signed as follows:

51 The check of Jan. 17, 1893, for $5,000, is signed—

"THE NATIONAL GRANITE STATE
BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of Jan. 23, 1893, for $5,000, is signed—
"NAT'L GRANITE STATE BANK OF EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 1, 1893, for $1,500, is signed—
"NATIONAL GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 1, 1893, for $5,000, is signed "and chg. ac. of—
THE NATIONAL GRANITE STATE BANK OF EXETER, N. H.,
By W. F. PUTNAM, *President.*"

The check of April 7, 1893, for $600, is signed—
"NATIONAL GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 7, 1893, for $672.05, is signed—
"NATIONAL GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 7, 1893, for $5,000, payable to order of American Loan & Trust Co., is signed—
"NAT'L GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 8, 1893, for $100, is signed—
"NAT'L GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *President.*"

The check of April 21, 1893, for $25, is signed—
"THE NATIONAL GRANITE STATE BANK,
By W. F. PUTNAM, *President.*"

The check of April 25, 1893, for $52.95, is signed—
"THE NATIONAL GRANITE STATE BANK OF EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 7, 1893, for $50, is signed—
"NAT'L GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

52 The check of April 7, 1893, for $5,000, payable to order of H. N. Smith, is signed—
"NATIONAL GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *President.*"

The check of May 2, 1893, for $3,000, is signed—

"NATIONAL GRANITE STATE BANK,
EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of May 6, 1893, for $3,000, is signed—

"NATIONAL GRANITE STATE BANK,
EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of May 6, 1893, for $2,000, is signed—

"NATIONAL GRANITE STATE BANK,
EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

Defendant objected and excepted to each check separately on the ground that they were incompetent and immaterial.

C. E. BYINGTON, witness for the prosecution, testified that T. King, vice-president of the National Bank of the Redemption, came to Exeter during the first week of May, 1893, after several of the checks which have been already mentioned were drawn. He then testified as follows:

Q. Did you know what his errand there was—what he was there for?

(Objected to by Mr. Streeter.)

Q. Had it anything to do with these checks you have been speaking about?

(Objected to by Mr. Streeter.)

The COURT: I think you may state what he came there for. You need not state what he said.

The defendant objected on the ground that the testimony was incompetent and immaterial and tended to the prejudice of the defendant.

Q. What did he come there for?

The COURT: Without stating what he said, what did he do?

A. He got additional security or collateral for the overdraft we had in the National Bank of Redemption.

53 Q. Do you know how much the overdraft was and for what month?

A. It was something like between twenty-five and thirty thousand dollars, I think.

(There was no objection or exception except as above.)

C. M. DORR, witness for the prosecution, testified that he was bank examiner; that he went to Exeter upon order of the comptroller to take charge of the National Granite State bank on Friday, July 28, 1893.

(Verbatim.)

Q. Whom did you find there as officers of the bank when you got there?

A. I found Mr. Byington in the front office, and I think Mr. Putnam was in the directors' room when I arrived.

(By Mr. BRANCH:) How long did Mr. Putnam stay there?

A. I think he was about the bank that day—that is, during the afternoon. I got there in the forenoon.

Q. What did you do first?

Mr. STREETER: I should like to inquire to which count this enquiry is directed.

Mr. BRANCH: First and second.

Mr. STREETER: I object to the general form of the inquiry.

The COURT: I think as a preliminary question it is all right.

The defendant excepted to this ruling.

A. Mr. Byington opened the vault, and I immediately looked through the loans to see whether there were any bonds or stocks owned by the bank, or as collateral to the bank, missing.

54 Q. What did you discover, if anything?

A. Nothing at that time. There was one bond missing, but I do not think I discovered it at that time. I went through them rather rapidly, of course; that was a bond held by the bank as collateral.

The defendant excepted on the ground that the answer introduced irrelevant and immaterial matter prejudicial to the defendant.

* * * * * * *

Q. Did you have any conversation with Mr. Putnam, in Boston, about those bonds?

A. I did not see Mr. Putnam in Boston.

Q. Or afterwards?

A. I cannot remember whether I had a little conversation with Mr. Putnam at the station in Exeter in regard to the bonds before he returned the first instalments or not.

Q. Did he ever, at any time or place, tell you what he had done with the bonds?

A. No, sir; he did not deny that he had them in his possession.

Mr. STREETER: To this answer I except; it is not responsive. If a question had been put calling for this answer I should have objected to it.

During the direct examination of C. M. DORR, witness for the prosecution, the following occurred:

(Verbatim.)

A. After I found that the bank had come into possession of these bonds and they were not to be found in the bank—Mr.
55 Putnam had gone to Boston, and I took the next train to Boston.

Q. Did you find him there?

A. I didn't succeed in finding him. I found Mr. Folsom, one of the directors, and consulted with him.

Q. Where did you find Mr. Putnam, if you found him at all?

A. I didn't find him that day. I didn't see him at all.

Q. When did you find him?

A. I don't think I found him at all. My mind has been occupied by other matters recently, and this matter is not very clear in my mind, but, as I remember it, he returned a portion of those bonds to me through his father.

Q. Did you have any conversation with Mr. Putnam in Boston about those bonds?

A. I didn't see Mr. Putnam in Boston.

Q. Or afterwards?

A. I cannot remember whether I had a little conversation with Mr. Putnam at the station in Exeter, in regard to the bonds, before he returned the first installment or not.

Q. Did he ever, at any time or place, tell you what he had done with the bonds?

A. No, sir; he didn't deny but he had them in his possession.

Mr. STREETER: To this answer I except. It is not responsive. If a question had been put calling for this answer, I should have objected to it.

Q. Did he ever at any time tell you what he had done with these bonds?

A. Not that I now recollect.

Mr. BRANCH: I propose to ask this witness a leading question, because I am taken by surprise at his answer. I have his tes-
56 timony before the grand jury, and I wish to ask him if he did not testify to certain things before the grand jury.

The COURT: You may do that.

Mr. STREETER: To that I object and except.

The COURT: It is a matter of discretion with the court to allow counsel on either side who say they are surprised to ask such question. It is not a matter of exception.

(By Mr. BRANCH:)

Q. (Referring to minutes and apparently reading for the purpose of putting his question.) Do you now recollect that you testified before the grand jury that when you discovered those bonds were gone you went to Boston and learned that Mr. Putnam had them,

and that he acknowledged to you he had those bonds on the 3rd day of August? Did you not so testify before the grand jury?

A. If it is a matter of record I suppose that it is so. Mr. Putnam done considerable of the business by letters.

Q. I am asking if you did not so testify before the grand jury.

A. If it is a matter of record I do not dispute the record.

Q. Do you not recollect that fact that you asked him what he had done with them?

Mr. STREETER: I still object and except to this because it is the record taken before the grand jury and should not be introduced here; it is improper, and I object to it.

The COURT: I do not think you ought to say it is improper after the court has ruled that it is.

Mr. STREETER: I beg your honor's pardon, I did not
57 understand that you had ruled on this point.

The COURT: It is a thing often done, and when counsel say they are surprised by the way a witness recollects a thing it is within the discretion of the court to allow counsel to direct the attention of the witness to something which may refresh his recollection.

By the COURT:

Q. Do you recollect this conversation in view of your attention being now called to it?

A. I do not recall distinctly where I had that interview, but I think it must have been at the station at Exeter.

Q. It is not a question of where it must have been, but whether you recall it now.

By Mr. BRANCH:

Q. Let me refresh your recollection a little further. Did you testify before the grand jury that you said to him something about the bond, and he said, "Mr. Dorr, I will state to you I am not going away"?

A. Yes, sir; he did.

Mr. STREETER: I object to the reading here before this tribunal of the records taken before the grand jury—records of the grand jury room—and I renew the objection which I took when my brother first put it in, two or three minutes ago. I renew the objection I then took in the production of grand-jury records before this court.

Mr. BRANCH: I am not.

The COURT: It is competent.

Mr. STREETER: I except.

Q. And did he not say, "I will get the bonds for you as soon as I can"?

A. Yes; I can assent to that.

58 The COURT: It must be understood that the putting into the question a conversation is merely done for the purpose

of directing the witness's attention to the matter, and that it is not in, unless the witness remembers the conversation and states it here.

Mr. STREETER: If your honor will pardon me, my exception to its being read is in the record and I don't want to be deprived of that.

The COURT: That is all right.

C. E. BYINGTON, witness for the prosecution, testified as follows:

(Verbatim.)

By Mr. BRANCH:

Q. Who was president of this bank from Jan. 1, 1893, till its suspension—the National Granite State bank?

A. Mr. Warren F. Putnam.

Q. Who were the directors?

A. I suppose they were Mr. Putnam, Mr. Eben Folsom, Mr. Horton, Mr. Patten, and Mr. Burlingame.

Q. Who acted as clerk?

A. Mr. Putnam, the president.

* * * * * * *

Q. What relation did Mr. Putnam bear to the Leavenworth electric railway?

A. He was president.

Q. What was his connection with the Lexington Hydraulic Company?

A. President of that also.

Q. Did he say anything about what he had used this
59 money for that he had drawn out?

A. I do not think I heard him.

* * * * * * *

Q. I understood you to say that on the 24th of May, when this twenty-six-thousand-dollar matter came up, they took as part payment for that twenty-five thousand dollars' worth of Lexington bonds.

A. Of Leavenworth bonds.

Q. At the same time they took ten thousand dollars of the bonds of the Lexington Company?

A. Yes, sir.

Q. Was this bank that you were connected with and Mr. Putnam was connected with, which issued bills as you have described and made these returns, located in Exeter?

A. Yes, sir.

The witness also testified, in answer to questions of Mr. Branch, that the Lexington and Leavenworth Companies were Mr. Putnam's paramount interest.

On cross-examination by Mr. Streeter, the witness testified as follows:

By Mr. STREETER:

Q. How long before July, 1893, had Mr. Putnam been president of the Leavenworth Company, if you know?

A. I do not know.

Q. Had he for some time prior thereto?

A. I do not think it had been in existence a great while.

Q. You may state whether you did not know that Mr. Putnam held large amounts of the Leavenworth and Lexington bonds and stock on his own account.

60 A. I understood so in a general way; yes.

Q. And that he was buying and selling more or less?

A. Yes, sir.

Q. That he had on hand more or less of these securities?

A. Yes, sir.

Q. What percentage of the stock of the National Granite State Bank of Exeter did Mr. Putnam own during the first six months of 1893?

Mr. BRANCH: I object.

The COURT: I should have doubt about this.

Mr. STREETER: The purpose is plain. This man was standing at the head of this bank. If he was a mere nominal owner of this stock, then his transactions might be viewed in one way. If he was three-fourths owner, which we offer to show, then his care in looking out that the property should not be depreciated would present another view. It is for the purpose of showing his relations to the bank and his ownership of the stock, we maintain, has a bearing upon his good intent with reference to the purchasing of these securities for the bank and in dealing with the bank's funds. It makes a little difference whether he owned all of the stock or did not own any of it.

Mr. BRANCH: Not the slightest. It has no bearing upon his *bona fide* intent to use them for the benefit of the bank.

Mr. STREETER: I do not care to argue that question now.

The COURT: Without regard to that, the rule in this court is that the cross-examination shall be limited to the subject-matter

61 of the direct, and even if that is something which it is competent to show in your case I do not think it is competent to be brought out in this way.

Mr. STREETER: Your ruling has been that on the question of intent the door is pretty wide open. This witness has been produced here for the purpose of showing facts from which intent might be drawn. That is a material question, and it is upon that same question that I put this inquiry—the question of intent.

The COURT: I do not say how I shall rule when this evidence is offered at the proper time. The Government has not opened up affirmatively the ownership of stock.

Mr. STREETER: The question of intent has been opened up.

The COURT: I don't think it is worth while to argue the question.

Against defendant's objection testimony was introduced on direct examination of one of the directors of the bank tending to show that about one year prior to the time when the defendant, as president of the bank in question, drew the checks on the Bank of the Redemption, as appears above in the bill of exceptions, the board of directors of the bank had passed a vote that no one but the cashier should have authority to draw checks on account of the bank; that Mr. Putnam was present at that meeting; that the vote was never recorded in the records.

The defendant excepted on the ground that the evidence was immaterial and incompetent for the reason that the president of a national bank has authority to draw checks as a necessary incident to his official position, and that such a vote by the directors
62 could not effect his right so long as he remained president of the bank or acted as such with the consent of the directors.

The above evidence was introduced on the question of intent and was so limited.

At the close of the Government's case the defendant's counsel made the following motion:

Circuit Court of the United States, District of New Hampshire.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 479, Criminal Docket.

The court having determined and notified the counsel for both parties that he should direct or request a verdict for the respondent upon all the counts in the indictment except the first, second, and seventh, the respondent now renews his motion that the court direct or request a verdict for the defendant upon the seventh count:

1st. Because the evidence of abstraction is not sufficient to warrant a verdict against the defendant.

2nd. Because of the variance between the allegations in the indictment and proof of place where the alleged offence was committed.

3rd. Because the bill of particulars submitted by the Government to respondent's counsel December 11, 1894, gave notice that the Government under this count would rely solely upon the abstraction of moneys by means of the checks set forth in said bill of particulars, all of which were drawn by the respondent in
63 Boston upon the National Bank of Redemption in Boston and paid by the said National Bank of Redemption in the city of Boston, and because the Government has introduced no evidence that the alleged offence of abstraction or any essential element of said offence was committed elsewhere than in the city of Boston, outside the jurisdiction of this court.

4th. Because the several offences of abstraction as alleged in said seventh count and in the bill of particulars were finally completed by the payment of the checks at the National Bank of Redemption, in the city of Boston, not within this district, and because there is

no evidence that any essential part of the offence charged was committed within this district.

(S'g'd) WARREN F. PUTNAM,
By his attorneys, STREETER & WALKER.

Filed Dec. 27, 1894.

The evidence adduced by the Government in support of the seventh count tended to prove the following facts: The bank in question kept an account with the National Bank of Redemption, in Boston, Massachusetts, which was designated by the term "reserve agent." From time to time deposits were made and checks were drawn by the bank at Exeter on this account.

Upon the 1st and 16th of each month statements called reconciliation sheets, showing deposits and checks on this account, were sent by the reserve agent to the bank at Exeter. The cashier of the latter compared the items on the reconciliation sheets with
64 the account on his books, and if the two coincided he so notified the cashier of the reserve agent, and the account was considered settled to that time. If the accounts did not agree, the discrepancies were noted and finally adjusted by correspondence between the two cashiers.

Evidence was admitted, subject to defendant's exception, tending to show that at a meeting of the directors of the bank at Exeter, held about one year prior to the alleged unlawful drawing of checks by the defendant at Boston, a vote had been passed by the board of directors that no one but the cashier should thereafter have authority to draw checks against the account with the reserve agent; that the defendant was present at that meeting and acted as clerk of the board.

Such a vote was never recorded in the directors' record and the reserve agent was never notified of it.

The checks mentioned in Mr. Branch's letter to Mr. Streeter of Dec. 11, 1894, to the seventh count were all drawn in Boston between Jan. 16 and May 6, 1893, both inclusive. They were delivered to the payees thereof in Boston in return for cash or funds in the form of checks or drafts.

The checks drawn by the defendant were put into process of collection through various national banks in Boston, and, having duly passed through the Boston clearing-house, were paid by the National Bank of Redemption at Boston out of funds in its hands belonging to the bank at Exeter, and proper entries were made upon the books of the reserve agent debiting the bank at Exeter and crediting itself with the amount so paid.

Two of the checks mentioned in the bill of particulars, viz., the check dated Jan. 17, 1893, for five thousand dollars, pay-
65 able to the order of the American Loan and Trust Company of Boston, signed by Warren F. Putnam, president, and that of Jan. 23, 1893, of the same amount and tenor, were produced and put in evidence by the prosecution. The evidence tended to show that the defendant delivered said checks to the payee, the American Loan and Trust Company, on the dates thereof and received in ex-

change for the same drafts for the same amount, drawn by the American Loan and Trust Company on Winslow, Lanier & Co., of New York. These drafts were paid by Winslow, Lanier & Co. at New York on Jan. 18 and 24, 1893, respectively, and the endorsement thereon showed that they had been used by the respondent for some purpose, the nature of which was not indicated by the evidence, except as appears from this bill of exceptions. The checks of Jan. 17 and 23, 1893, were duly presented to the reserve agent through the clearing-house, paid, and charged off as above described.

That all the foregoing-named checks, except the first two checks, dated January 17th and 23rd, 1893, respectively, were drawn between the first day of April, 1893, and the 6th day of May, 1893. Neither the cashier nor the directors of the bank knew that the April and May checks had been drawn until about the 1st of May, when the reconciliation sheet with the accompanying checks were received from the National Bank of Redemption; that Putnam declined to make any explanation as to why the checks had been drawn or what he had done with the money, and the evidence tended to show that — evaded making any explanation until about the 24th of May; that then he stated to the directors that the money had been used to put into the Leavenworth Electric Railway
66 Company and the Lexington Hydraulic Company; that at this time the amount of money which he had withdrawn from the funds of the bank amounted to about $36,000, to wit, $10,000 on January 17th and 23rd and $26,000 in April and May.

CHARLES E. BYINGTON, witness for the prosecution, testified as follows:

(By Mr. BRANCH:)

Q. How often did they send those reconciliation sheets?
A. Twice a month.
Q. At what time?
A. The middle and the first of the succeeding month.
Q. Did you get any checks or vouchers at the middle of the month?
A. Probably I did, the first of February.
Q. That would not be the middle of the month?
A. It would not.
Q. When did you get your vouchers back?
A. The first of the month.
Q. But you got your reconciliation sheets twice a month?
A. Twice a month.
Q. When that reconciliation sheet came in on the first of February, 1893, do you remember about those checks of five thousand dollars, one on the seventeenth and the other on the twenty-third of January, drawn to the order of the American Loan and Trust Company?
A. I think I do, sir.
Q. Look at those two checks (handing witness a package of checks) and say whether or not you ever saw them before.

A. I have seen them.

67 Q. Where?

A. I have seen them in the National Granite State bank, at Exeter.

Q. Can you tell when or about when?

A. It was some time the first of February, 1893.

Q. Did you have any conversation with Mr. Putnam about those two drafts?

A. Yes, sir.

Q. What was it?

A. Well, we were—we had given our note for ten thousand dollars to this American Loan and Trust Company some time previously to this. I asked Mr. Putnam what these were for, and he said they were to pay that loan. I asked him if I should enter it on the books as paid, and he said yes.

Q. Did you do so?

A. I did so.

Q. And credited that amount to the National Bank of the Redemption?

A. Yes, sir.

Q. Did you know those checks had been drawn till they came back with your vouchers on the first day of February?

A. No, sir; I think not.

From all the evidence the Government contended this conversation took place in Exeter about February 1st, 1893, when the reconciliation sheet for January came back from the National Bank of Redemption with the vouchers for that month, among which were the two checks for $5,000 each drawn January 17th and 23rd, respectively, and that the entry which was made by Byington, the cashier, charging off the note of $10,000 and crediting the National Bank of Redemption with the amount and allowing it on the account current was made immediately after this conversation and in accordance with Putnam's instructions so to do to the cashier.

Some time in May following Byington discovered that the note had not been paid, and upon interrogating Putnam about it he, Putnam, stated that when he said it was paid he lied about it.

68 The Government offered no evidence, except as appears from this bill of exceptions, of any acts committed by the defendant within the district of New Hampshire connected in any way with the alleged unlawful abstraction.

The court denied the defendant's motion, and the defendant excepted on the following grounds:

1. That the evidence showed that the abstraction, if committed at all, was completed in Boston, Massachusetts, outside the jurisdiction of this court.

2. That the evidence of criminal acts committed within this jurisdiction is not sufficient to establish the jurisdiction of this court over this cause.

3. That the evidence shows that the abstraction, if committed at all, was completed, so far as the defendant was concerned, when the

checks by means of which the abstraction was alleged to have been accomplished were paid by the National Bank of the Redemption.

4. That the acts alleged to have been committed by the defendant within this district did not constitute an offence of the character charged in the seventh count and the bill of particulars annexed thereto.

5. That there was a substantial variance between the locality alleged in this count and that indicated by the proof.

69 The court charged the jury as follows:

I presume, gentlemen, that this case has at times confused you. You doubtless have been in conditions of mind when it it seemed to you almost impossible to intelligently consider the questions involved; but all cases, especially cases of this character, simplify themselves as the trial proceeds, so that when they are ultimately submitted to the jury, which is to pass finally upon the facts, the controversy is easily understood and comprehended.

The Government, under the Constitution, has the right, in the interest of business and for the protection of the people, to devise means for exchange of currency in order that business between man and man and between the different sections of the country may be easily transacted. While the Government may exercise such right and may confer upon certain individuals or sets of individuals the right to carry on a banking business, it may also determine the manner in which it shall be done and may provide such laws as will protect the public against fraud and imposition, and it may say that individuals on whom this banking right is conferred who fail to discharge their semi-official duties honestly and faithfully shall be held to respond criminally. That is in the interest of good government and it is right, and any set of men exercising this important privilege under the Government must understand that they are responsible to the Government estending the privilege. I do not make this remark with any intention of reflecting upon the respondent, but for the purpose of reminding you that it is important that persons who exercise such privileges by virtue of a

70 license from the Government should understand their responsibilities to the Government which permits the privilege to be exercised.

Now, while the Government exists for the purpose of regulating business and protecting the people generally, it also exists quite as much for the protection of each and every individual, not only in respect to his property affairs, but also in respect to his liberty; so it is provided as a part of our system that no man shall be presented and tried before a jury for the higher offenses except upon formal presentment, which means that the charge shall be spread out on paper and be presented by the grand jury and then tried in the shape it is presented, unless there is some legal objection which the court is to pass upon. This is so for the reason that justice requires that the accused shall know what the charge against him is and what he has to answer. Then he is to have the fullest opportunity to present his evidence and make his answer. So you will see the

constant effort of the Government is to protect the liberty of citizens as well as the business and the public generally.

Now, the law not only requires in this same line of protection that the charge shall be set out by indictment, and that the respondent shall have the opportunity to answer it, but the statute provides—at least it is the law—that no intendment is to be made against him if he does not testify. Human liberty is considered so sacred in the eye of the law that the burden is placed upon the Government of making out a case, and a respondent, though charged, is not bound to testify or to answer further than to plead unless he sees
71 fit. In other words, no presumption should be made against him if he fails to do it; and, further, although this respondent stands here indicted—presented by an indictment supposed to have been passed upon by the grand jury—it is a mere formal presentation. He stands before you presumed to be innocent. He is surrounded with the presumption of innocence. He is entitled to that advantage as the trial proceeds before you, and he is entitled to a verdict unless the Government during the trial by evidence before you has overcome that presumption—that is to say, you should consider the respondent innocent until he is proved guilty. The idea of a fair trial requires you to approach all these questions with such a condition of mind as will enable you to accord the respondent the presumption of innocence, making no intendment against him by reason of his not having testified, but you are to look at the evidence and say, on the whole, whether you are satisfied of his guilt in the manner and form as the Government has alleged.

Now, while the Government throws around every citizen, whether he is of consequence or obscure, all these safeguards—while the law exacts here in the trial of facts a consideration of all such phases—it with equal emphasis requires your minds to approach the question fearlessly without being influenced by sympathy or prejudice—either by sympathy for the respondent or prejudice against the Government.

Neither you -or the court are responsible for the punishment attached to statutory wrong-doing. My only responsibility is to state to you the law which should govern your deliberations, and your responsibility is to decide the facts without regard to consequences.

72 You are not to say that because the penalty is severe the respondent should not be convicted if he is guilty; neither should you say that because the country is disturbed by frauds in connection with banks that this man should be sacrificed. You are not to do that. You are to look at the questions here as among the most important questions submitted to men to decide, questions involving great interests of the Government and greater interests of the respondent.

These suggestions should be considered only with the idea of bringing yourselves to understand that you are to give this case the best consideration and the best judgment in your power. So it comes down to this: After removing from your mind all prejudice

and giving the respondent the presumption of innocence you are to take the evidence and say whether, in your judgment, he is guilty.

I may as well say here that all propositions which it is necessary for the Government to establish must be established beyond a reasonable doubt. That does not mean that you are to be convinced beyond all possibility of doubt; it does not mean that every possible doubt is to be removed. It merely means that, upon the whole, after viewing the situation from all the evidence, you should be able to say, as reasonable men, I can see no good reason to doubt that he is guilty. You are not to exercise your ingenuity for the purpose of raising a possible doubt, but you are to be satisfied beyond a reasonable doubt—that is, you must be in a position to say to yourselves, I am not able to see any good reason for doubting the guilt of this respondent.

73 In order to present to you the questions involved it is necessary, perhaps, for me to read from the statute or act of Congress upon which this prosecution is based. Congress has provided the way in which this banking business shall be conducted, and has provided that "every president, director, cashier, teller, clerk, or agent of any association who embezzles, abstracts, or wilfully misapplies any of the moneys, funds, or credits of the association" shall be punished so and so. So you see that a prosecution under this statute involves the Government in the necessity of establishing a banking association, and that the respondent was an officer of such banking association.

If certain men should associate themselves together without any color of authority from the General Government and pretend to do a banking business, however fraudulently they might carry it on, they would not be within the meaning of this statute. This statute is simply intended to regulate the national banking business carried on under its authority by gentlemen associating themselves together for that purpose.

So it is incumbent upon the Government to show that there was a national bank. In other words, to show that there was a national banking association carrying on business at Exeter under the authority or at least claiming to be under the authority of the Treasury Department, and it must appear that they were doing business within the scope of that authority, and that this respondent was acting or exercising the office of president of a national bank at the place and within the general scope of authority intended to be conferred.

74 So you must find that this association of gentlemen were doing business as a national banking association, and that they were doing business within the line of authority conferred by the certificate of authorization.

The certificate of authorization, which is one of the original papers creating this association—in other words, which authorizes a banking association at Exeter—proceeds to designate the association under the name of "the National Granite State Bank of Exeter."

Now, it is objected that there is what lawyers call a variance between the proof and the language in the indictment; and there is

to this extent, that the words "of Exeter" are omitted in describing the bank in the indictment. So this certificate of authorization can only be considered by you upon the first questions I have submitted, viz: Was there a national banking association at Exeter? Was it authorized? Was it organized? Was it doing business under the authority conferred and of the kind and character contemplated by the certificate? If there was a bank there and they claimed to be doing business under the authority of the General Government, then it was a bank within the meaning of this statute, and if the respondent was president of it and claimed to exercise the privileges incident to such an office he is within the meaning of the statute.

I have said that this certificate can only be considered upon the general question whether this was a national bank at Exeter, doing business within the line of authority conferred by the Government; and upon the same question you may consider the nature of their business, what they were doing, and the manner in which they were transacting the business of the alleged association.

75 If you should find these gentlemen were associated together as a banking association and were at the locality and place named, acting under the general authority of the Treasury Department and within the scope of the authority conferred, then it was a banking association within the meaning of this statute to which I have called your attention.

If the Government has succeeded in establishing these particulars, still they must go further and establish that the respondent was an officer of the banking association, because the statute is directed against bank officers in their official capacity as acting officers of a national bank.

As I have said, the defendant claims there is a variance between the name used in the certificate of authorization and the name set out in the indictment. The variance is this: The name of the bank as created was "the National Granite State Bank of Exeter," while the indictment charges that the respondent was "then and there the president of a certain national banking association then and there known and designated as the National Granite State bank, which said association had been theretofore created and organized under and by virtue of the laws of the United States of America and which said association was then and there acting and carrying on a national banking business at said Exeter under the laws aforesaid." Now, you will see that the variance consists in the description of the official capacity of the respondent in omitting the words "of Exeter" from the name. Otherwise the name is set out in the indictment precisely as it is in the certificate of authorization.

76 The further allegation in the indictment is that they were known and designated by the name therein set forth, and that they were a national banking association. The position of the respondent is that there is a variance, and there is. I instruct you that there is a variance, and for that reason you should consider this certificate of authorization simply upon the original question of whether or not there was a national banking association there.

The Government answers this objection of variance by saying the banking association adopted and used and was generally known by a slightly different name; that the association was known and designated as the National Granite State bank, carrying on a national banking business at Exeter; and the Government has introduced evidence tending to show that the association did adopt a different name and did drop the words "of Exeter" generally in its business and used it in the bank books, upon their check books and letter-heads, and in their correspondence with the executive department of the General Government.

If this be so, the Government may, notwithstanding the variance which I have stated, proceed against the respondent either under the name by which the association was originally christened or under the name of its adoption, provided it was so designated and so generally known by the public, including, of course, the respondent and the department of the Government under whose authority they were carrying on the business as a banking association. So, notwithstanding the fact that I say there is a variance, if you should be satisfied that this respondent was connected as president with a bank exercising the authority and privileges of a national
77 bank and adopting and using the name of "the National Granite State bank," omitting the words "of Exeter;" that they were using such name in their business; that the president understood it and designated it as such in the records and papers of the bank, and that the Comptroller of the Currency understood that they were using such a name, then he is an officer of a national banking association and responsible under the laws, providing he is guilty of improper conduct. Then you will come to what we call the merits of the case and say whether he is guilty or not.

I will repeat: If the Government has established all this and you find that the respondent was president of a banking association acting under the authority of the General Government; that he accepted the position of president and assumed and exercised the duties thereof, knowing that such association had adopted the name of "the National Granite State bank," dropping the words "of Exeter," and that, being so designated, was generally known as such and was suffered to go on doing business under such name and at the place indicated by the certificate of authorization, then he was president of a banking association within the meaning of section 5209 of the Revised Statutes, which is, as I have stated, directed against any president or other officer of a national banking association who commits a wrong within the meaning of such section.

If you find all these questions in the affirmative, you will then come to the questions presented by the various counts in the indictment which are to be submitted. For various reasons, which it is not necessary to state to you, all counts in the indictment have been removed from your consideration except the first, second, and seventh counts. The other counts, for reasons considered
78 sufficient by the court, have been withdrawn from your consideration.

The first count is known as the embezzlement count. This

count charges the embezzlement of sixteen bonds of the denomination of one thousand dollars and eight of the denomination of five hundred dollars. If you should find the respondent guilty, under the rules which I have laid down, of embezzling either the whole or any part, your verdict should be guilty, for the amount, under this statute, is immaterial. Under the common law the amount was material, because the sentence depended upon the amount, but that idea is entirely obliterated, so it is of no consequence, and if you find him guilty of the embezzlement of any of the bonds alleged, whether it be five hundred dollars or any other amount, it is your duty to find him guilty.

What is embezzlement? Embezzlement may be defined generally as the fraudulent removing and secreting of personal property with which the party has been intrusted for the purpose of applying it to his own use.

So the question comes, was this respondent, as president of this banking association, if you find there was one—was he intrusted with these bonds, and did he, if he was intrusted with them, fraudulently remove them or secrete them for the purpose of applying them to his own use? That is the question, gentlemen, that you are to pass upon, and you have a right to consider all the circumstances. You have a right to consider anything in the evidence that discloses his conduct, the appearance of the respondent; anything that appears in the evidence as to what he claimed, what he had an opportunity to do, what he did, and what he did not
79 do. All these things you have a right to consider for what they are worth one way or the other. There is no hard, technical, fine rule of law which excludes anything of that kind from the common sense of the jury. While you are not, as I have said, to make any intendment against the respondent by his not testifying here, you may consider the way in which he took the bonds, what he claimed or did not claim in regard to them, and all the other circumstances connected with the transaction, and say whether at the time he took them you think he intended to take them and use them in advancing his own interests, thereby converting them to his own use.

To repeat: Under this charge, in order to convict, you must find that the defendant was intrusted with the bonds as president and that he conceived the idea of wrongful appropriation, and that, having such purpose, did take them away from the bank for such purpose and did actually convert them or some part thereof. If you think he did have such purpose and carried it out, then it is your duty to return a verdict of guilty; and if you do not find these facts, it is your duty to acquit. So the question is, Was the respondent, as president of this banking association, intrusted with the bonds named in the first count, did he have access to them and did he take possession of the bonds or any part thereof, intending to convert them to his own use, and did he, as a matter of fact, convert the bonds or any part thereof. If he did—if you should find this under the rules stated—your verdict should be guilty; otherwise it should be not guilty. If you find that he did take these bonds

and did have such a purpose—in other words, if you find the act of embezzlement, the fact that he returned the bonds would not operate to condone the offense. If you find these things the em-
80 bezzlement was complete, and a return at a subsequent time would not purge the guilt. So it turns upon the question whether he had them in his possession and whether he intended to take them and did take them and convert them to his own use.

That is the first count—the embezzlement count.

The second count is based upon the same transaction and the acts complained of are alleged to be abstraction. The statute, as you have perceived, provides that if any bank president or other officer shall embezzle or abstract the moneys, funds, and credits he shall be punished, etc. So the Government exercised the right, which it may properly exercise in presenting its case to a jury, to draw a count presenting each statutory offense and then may put in its evidence, and it is for the jury to say, under the rules stated by the court, whether upon the evidence it is abstraction or embezzlement. While they may do that the respondent should not be convicted on both counts, because, you will see, if he is guilty of embezzlement he was entrusted with the bonds in his official capacity, and while thus holding them he converted them to his own use, while abstraction, as you will see in a few moments, is a different affair, it being the wrongful withdrawing or taking away. So if you find him guilty of embezzlement under the first count you need not proceed to determine whether he is guilty or not under the second. To repeat, if you find him guilty under the first count that will remove from you the responsibility of considering the second count, for, as I have said, the second count is based on the same transaction and the acts complained of are alleged to be abstraction. This may be done. The Government may set out a transaction in one count alleging it to be one statutory offense and in a dif-
81 ferent count may allege the other offense and go to the jury, and it is for the jury to say on which, if either, the respondent is guilty; but in this case if he is found guilty of one he should not be found guilty of the other. So if you find him guilty of embezzlement under the first count you need not pass upon the second.

If you find him not guilty under the first count, then you should proceed to consider the second count.

The second count charges him with abstraction. Now, what is that? The provision of the statute to which I have referred provides that every president, director, etc., who embezzles, abstracts, or wilfully misapplies any of the moneys, funds, or credits of the association, etc. There is nothing charged against the respondent for wilful misapplication of the moneys, funds, and credits of the association, so you need not trouble yourselves with that. The only question under the second count, if you come to it, is whether the respondent, if you find he was president of a national banking association, abstracted these bonds.

The word abstract, as used in the second count, is to be received in the sense in which it is commonly and popularly accepted—it is to withdraw, to separate, or take away. So, then, did the respondent

withdraw these bonds or separate them from the other property of the bank or take them away? That is the first question. The count alleges that he did. I will read the second count. It sets forth that "on the 26th day of July, in the year of our Lord one thousand eight hundred and ninety-three, at Exeter, in said district, and within the jurisdiction of this court, he, the said Warren F.
Putnam, being then and there the president of a certain na-
82 tional banking association then and there known and desig-
nated as the National Granite State bank, which said association had been theretofore created and organized under and by virtue of the laws of the United States of America and which said association was then and there acting and carrying on a national banking business at said Exeter under the laws aforesaid, did then and there unlawfully and wilfully and without the knowledge and consent of said association and with intent to injure and defraud said association abstract and convert to his own use certain funds and credits of the property of said association, to wit," etc., setting out the same bonds that are named in the first count.

As I have said, the term abstraction or abstract, as employed in the statute, is to be understood in its ordinary and popular sense. It has no technical meaning peculiar to lawyers. It means taking or withdrawing from or taking away. So one question is this, Did he withdraw the bonds or any part thereof? And the same rule as to any part thereof applies here as under the first count. If you should find that he did take away and separate these bonds, this alone is not sufficient. The Government, in order to make out the offense, must show, in addition to the act of taking or withdrawing, that the taking or withdrawing was without the knowledge and consent of the association, and that the bonds so taken or withdrawn were converted to the use, benefit, and advantage of the respondent or some person other than the association, with intent to injure or defraud the association.

For the purpose of defining what this offense is, I will use the language of another judge in a similar case, and I give it to you as my own instruction, of course:

"The essential ingredients which go to constitute the
83 criminal offense of abstraction are, therefore, first, the de-
fendant's official relation to the bank; second, the taking or withdrawing by him or by his direction of the moneys, funds, credits, or assets of the association; third, that such taking or withdrawal was without the knowledge or consent of the bank or of its board of directors; fourth, that the money or effects so taken and withdrawn from the possession of the bank were converted to his own use or to the benefit and advantage of some person other than the association, and, fifth, that this was done with intent to injure and defraud the association."

That is stating distinctly the various elements of abstraction which I have undertaken to give in a more general way in the instructions which have preceded this.

Now, then, as to the seventh count, which is a little different and presents other questions, as you will see. In the second count I

have been talking about the offense of abstraction of specific articles in existence like a piece of paper or like a bond—in fact, it is bonds alleged to have been abstracted. The statute provides that every president and other officer who abstracts any of the moneys, funds, or credits shall be punished so and so. The statute, among other things, is intended to protect the credits of a banking association—that is, something that appears to be its due and which is among its assets.

The indictment charges that the respondent unlawfully and wilfully and without the knowledge and consent of said association and with intent to injure and defraud said association abstracted and converted to his own use the monies, funds, and credits of the property of said association, to wit, forty thousand dollars of the monies, funds, and credits of said association. The general allegation
84 is the abstraction of forty thousand dollars of the moneys, funds, and credits of the Exeter bank. If the respondent abstracted any part of the monies, funds, and credits under the rules which I shall state he may be found guilty under the allegation of the larger sum. The sum is immaterial, as I have before stated.

The general rules laid down in respect to the second count with reference to abstraction apply here. It is the intentional withdrawal of the monies, funds, and credits belonging to the bank, intending to and actually converting them to his own use or withdrawing them with intent to injure or defraud some other person or company than the banking association whose property is abstracted. So you will see that the first question is whether he is guilty of abstracting under the rules laid down in the second count—guilty of abstracting the monies, funds, and credits of the bank to any extent. If he is, he is guilty providing any part of it was done in New Hampshire.

Now, while the general rules laid down with reference to the other counts apply here, the inquiry is complicated by other elements which enter into the transaction. I must, therefore, call your attention to other claims and considerations. This court, speaking generally, has jurisdiction only of offenses committed in New Hampshire. So if you should find that the abstraction complained of in this count was fully completed in Massachusetts, then it is your duty to return a verdict of not guilty. But if you should find that he is guilty of abstraction conceived and partially accomplished in Massachusetts, but finally consummated in New Hampshire, then the offense is within the jurisdiction of the Federal court in
85 the district of New Hampshire, and your verdict should be guilty.

Now, that jurisdiction is based upon another section of the statute, which I will read, as it will be more satisfactory than a statement by myself. Section 731 of the Revised Statutes of the United States provides that "when any offense against the United States is begun in one judicial district and completed in another it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district in the same manner as if it had been actually and wholly committed therein."

So you see, if you inquire into this under the rules I have stated, and find that there was wrongful abstraction, that it was conceived in Massachusetts and begun there, but that it was the purpose of making it complete and it was completed in New Hampshire, then it opens up the whole transaction here in this court, and can be considered the same as though it all occurred in New Hampshire.

The theory of the respondent is this: In the first place, they say that nothing wrong was done either here or in Massachusetts. Then they say if there was anything wrong in these transactions, which were, as you will remember, the making of these checks aggregating some forty thousand dollars, drawn by Mr. Putnam as president of the bank at Exeter, and the transactions which followed such drawing—if there was anything wrong in that—it was begun and completed in Massachusetts.

The wrongful transaction of which the Government complains is that Mr. Putnam, the respondent, made checks on the National Bank of Redemption in Boston, some of them being for five thou-
sand dollars, and so on, whereby he withdrew from the funds
86 of the Exeter bank existing there in Boston certain of their assets. Mr. Streeter argues that this was all right; that he had authority to do it; that it was an honest transaction; but, he says, if you find it is wrong it was all done and consummated in Massachusetts, and hence we have nothing to do with it here. If it was consummated in Massachusetts we have nothing to do with it, and so the respondent must be acquitted on that count.

The Government's theory is that the transaction was not completed in Massachusetts; that, although it was commenced there, the checks drawn there, and the money received there, it was not effectually defrauding the bank of its rights until something had been done in New Hampshire, at Exeter, whereby the bank was induced through deception or artifice to surrender its credit.

Now, if the acts of drawing these checks and the conversion of the money were the sole charges in the indictment, it would unquestionably be an offense committed in the district of Massachusetts and one with which we should have nothing to do here; but the charge in the indictment is the abstraction of moneys, funds, and credits. I desire to make myself understood, gentlemen. If this indictment merely charged the abstraction of money and said nothing about credits, it being conceded here that the money was withdrawn by means of these checks, it would be an offense committed wholly in Massachusetts, and you would have nothing to do with it; but if, under the instructions which I am about to give, you find that the offense charged, which was the abstraction of moneys, funds, and credits, was not completed and had not been effectually consummated in Massachusetts, but was completed here
in New Hampshire, then it would be an offense within the
87 meaning of section 731, about which inquiry may be made here, and the question of guilt or innocence determined upon the whole transaction.

Mr. Branch, representing the Government, says this whole transaction in Boston, so far as the drawing of the checks and the receiv-

ing of the money was concerned, was fraudulent. He argues that the bank at a meeting had adopted a resolution providing that the president should not draw checks, and that therefore the president had no authority and the president knew he had no authority to draw checks. This becomes material, if you find it was so, because, if he had the authority to draw the checks and did withdraw the funds, although he may have done it for the purpose of misappropriating and abstracting the money, if he had the authority to draw those checks, it would become a past and completed act in Massachusetts, as you will see; but if he did not have authority, if he was acting outside of his authority and acting fraudulently, while the drawing of the checks was effectual in withdrawing the funds from the Bank of Redemption in Boston, it would not withdraw and abstract the credit of the bank in Exeter existing in its behalf in the Bank of Redemption in Boston, because, notwithstanding he drew the checks, if he had no authority to do it, the Exeter bank would still be in position to enforce its rights and receive the benefits of its credit, which had been improperly and unlawfully interfered with by some unauthorized act in Boston, and, while the money had gone and been misapplied, the credit of the Exeter bank would be the same substantially and might be enforced. Now, then, if the respondent conceived the plan of drawing these checks, obtaining the money and abstracting or withdrawing the credit, and had
the intention, at the time he drew the checks and withdrew the
88 money, to induce the directors at Exeter, through artifice and misrepresentation, to surrender that credit, then the transaction would be a continuous one and would be within the jurisdiction of this court. So, in order to give jurisdiction here and to enable you to pass upon this question, you must find that the offense was partly committed in Massachusetts, which it is conceded was so, if there was any offense, and partly here—that is, in order to give this court jurisdiction. In order to make this offense committed partly in Massachusetts and partly here you must find that he conceived the plan, not only of abstracting the moneys by means of the checks, but of making the transaction complete and effectual by withdrawing the credit existing in behalf of the Exeter bank. So, if he came into New Hampshire and through artful deception and fraudulent misrepresentation, with the intention of making the abstraction begun in Massachusetts complete, induced the officers of the bank to surrender that credit, then he is guilty under this charge which alleges that he wilfully and unlawfully abstracted the moneys, funds, and credits of the Exeter bank.

But if he had no such purpose, if he acted honestly with respect to the checks and got the money honestly, of course he should not be convicted; or if you find that at the time of the abstraction in Massachusetts he had no intention or scheme to make it effectual by inducing this surrender at Exeter whenever it should come to the attention of the bank officers at Exeter, then you should not find him guilty of the charge in this count.

Something has been said about reconciliation sheets. Those
89 are sheets, I suppose, on which the Bank of Redemption puts

down the transactions involved in the banking business between that bank and the Bank of Exeter, while, on the other hand, the bank at Exeter has sheets on which it keeps its transactions with the Bank of Redemption, and they exchange them once in two weeks. It is claimed here that the understanding always was that if there were any errors they were corrected on such trial balances.

If the respondent, understanding the manner of doing business, entered upon the scheme of abstracting the moneys by means of these checks, and as a part of it understood that when confronted with these balance-sheets, in order to make the abstraction of the credit effectual, he must induce the bank to surrender such credit and did do that by making misrepresentations when presented with the sheet in New Hampshire, then it was a transaction begun in one jurisdiction and completed in another and within the statute to which I have called your attention.

I have, gentlemen, endeavored to state the questions involved here, and while I have not restated the general rule as to reasonable doubt which I stated in the outset it, of course, applies to all the propositions which it is necessary for the Government to make out.

You are to take the case and give it your best consideration and pass between the respondent and the Government, and say whether you are satisfied, under the rules stated, that he is guilty in respect to any of these counts submitted to you, viz., the 1st, 2nd, and 7th counts.

As to this offense which I have been talking about in the last part of my instructions, when I referred to the one claimed
90 to have been begun in Massachusetts and completed here, if you find him guilty under the rules which I have suggested, the fact that it was afterwards adjusted by his surrendering the bonds would not be an answer, and this for the reason that banks not only do business for profit to themselves, but they have the privilege of issuing currency, receiving deposits, and transacting business with the public generally, and if there was any irregularity and if the parties undertook to settle between the offender and the stockholders or directors it is not an answer to a criminal prosecution and should not be so considered by you in this inquiry.

I have given you the general rule that you may consider all his acts and doings as bearing upon the original intent. This surrendering of the bonds may be considered in connection with that, but the fact that he turned over the bonds to make up for these checks, provided you find him guilty with respect to the original transaction, is not a bar to this prosecution, and you are not relieved from passing upon the question of his guilt, although the bonds were surrendered.

After the judge's charge was given and before the jury retired the defendant excepted to certain portions of the charge:

First. The defendant excepted to that portion of the judge's charge relating to the admissibility and effect of the certificates of authorization and of organization of the National Granite State Bank of Exeter.

That portion of the charge excepted to on this point is as follows:

After stating the reasonable-doubt rule the judge said:

91 In order to present to you the questions involved it is necessary, perhaps, for me to read from the statute or act of Congress upon — this prosecution is based. Congress has provided the way in which this banking business shall be conducted, and has provided that "every president, director, cashier, teller, clerk, or agent of any association who embezzles, abstracts, or wilfully misapplies any of the moneys, funds, or credits of the association" shall be punished so and so. So you see that a prosecution under this statute involves the Government in the necessity of establishing a banking association and that the respondent was an officer of such banking association.

If certain men should associate themselves together without color of authority from the General Government and pretend to do a banking business, however fraudulently they might carry it on, they would not be within the meaning of this statute. This statute is simply intended to regulate the national banking business carried on under its authority by gentlemen associating themselves together for that purpose.

So it is incumbent upon the Government to show that there was a national bank. In other words, to show that there was a national banking association carrying on business at Exeter under the authority or, at least, claiming to be under the authority of the Treasury Department; and it must appear that they were doing business within the scope of that authority and that this respondent was acting or exercising the office of president of a national bank at the place and within the general scope of authority intended to be conferred.

So you must find that this association of gentlemen were doing business as a national banking association and that they were doing business within the line of authority conferred by the certificate of authorization.

The certificate of authorization, which is one of the original papers creating this association—in other words, which authorizes a banking association at Exeter—proceeds to designate the association under the name of "the National Granite State Bank of Exeter."

Now, it is objected that there is what lawyers call a variance between the proof and the language in the indictment, and there is to this extent, that the words "of Exeter" are omitted in describing the bank in the indictment. So this certificate of authorization can only be considered by you upon the first question I have submitted, viz:

Was there a national banking association at Exeter? Was it authorized, was it organized, was it doing business under the authority conferred and of the kind and character contemplated by the certificate? If there was a bank there and they claimed to be doing business under the authority of the General Government, then it was a bank within the meaning of this statute, and if the respond-

ent was president of it and claimed to exercise the privilege incident to such an office he is within the meaning of the statute.

I have said that this certificate can only be considered upon the general question whether this was a national bank at Exeter doing business within the line of authority conferred by the court, and upon the same question you may consider the nature of their business, what they were doing, and the manner in which they
92 were transacting the business of the alleged association.

If you should find these gentlemen were associated together as a banking association and were at the locality and place named acting under the general authority of the Treasury Department and within the scope of the authority conferred, then it was a banking association within the meaning of this statute to which I have called your attention.

If the Government has succeeded in establishing these particulars, still they must go further and establish that the respondent was an officer of the banking association, because the statute is directed against bank officers in their official capacity as acting officers of a national bank.

As I have said, the defendant claims there is a variance between the name used in the certificate of authorization and the name set out in the indictment. The variance is this: The name of the bank as created was "the National Granite State Bank of Exeter," while the indictment charges that the respondent was "then and there the president of a certain national banking association then and there known and designated as the National Granite State bank, which said association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said association was then and there acting and carrying on a national banking business at said Exeter under the laws aforesaid." Now, you will see that the variance consists in the description of the official capacity of the respondent in omitting the words "of Exeter" from the name; otherwise the name is set out in the indictment precisely as it is in the certificate of authorization. The further allegation in the indictment is that they were known and designated by the name therein set forth, and that they were a national banking association. The position of the respondent is that there is a variance, and there is. I instruct you that there is a variance, and for that reason you should consider this certificate of authorization simply upon the original question of whether or not there was a national banking association there.

The Government answers this objection of variance by saying the banking association adopted and used and was generally known by a slightly different name; that the association was known and designated as the National Granite State bank, carrying on a national banking business at Exeter, and the Government has introduced evidence tending to show that the association did adopt a different name and did drop the words "of Exeter" generally in its business and used it in the bank books, upon their check books and letter-heads, and in their correspondence with the executive department of the General Government.

If this be so, the Government may, notwithstanding the variance which I have stated, proceed against the respondent either under the name by which the association was originally christened or under the name of its adoption, provided it was so designated and so generally known by the public, including, of course, the respondent and the department of the Government under whose authority they were carrying on the business as a banking association. So, notwithstanding the fact that I say there is a variance, if you should be satisfied that this respondent was connected as president with a bank exercising the authority and privileges of a national
93 bank and adopting and using the name of "the National Granite State bank," omitting the words "of Exeter," that they were using such name in their business, that the president understood it and designated it as such in the records and papers of the bank, and that the Comptroller of the Currency understood that they were using such a name, then he is an officer of a national banking association and responsible under the laws, providing he is guilty of improper conduct; then you will come to what we call the merits of the case and say whether he is guilty or not.

I will repeat. If the Government has established all this and you find that the respondent was president of a banking association acting under the authority of the General Government; that he accepted the position of president and assumed and exercised the duties thereof, knowing that such association had adopted the name of "the National Granite State bank," dropping the words "of Exeter," and that, being so designated, was generally known as such and was suffered to go on doing business under such name and at the place indicated by the certificate of authorization, then he was president of a banking association within the meaning of section 5209 of the Revised Statutes, which is, as I have stated, directed against any president or other officer of a national banking association who commits a wrong within the meaning of such section.

If you find all these questions in the affirmative, you will then come to the questions presented by the various counts in the indictment which are to be submitted.

Second. The defendant excepted to that portion of the charge relating to the question of variance between the name used in the indictment to designate the bank and that proved by the certificate of authorization and organization.

That portion of the charge excepted to on this point is the same as that set out under the first point, immediately preceding.

Third. The defendant excepted to that portion of the judge's charge relating to the admissibility and effect of the evidence adduced by the Government to prove that the bank carried on business under the name of the National Granite State bank.

That portion of the charge excepted to on this point is the same as that set out under the first point, immediately preceding.

94 Fourth. The defendant excepted to that portion of the judge's charge relating to the right of the Government to proceed against the defendant as president of a bank described by

either of two names, viz., the National Granite State bank and the National Granite State Bank of Exerter.

That portion of the charge excepted to on this point is the same as that set out under the first point, immediately preceding.

Fifth. The defendant excepted to all that portion of the charge relating to the place where the abstraction alleged in the seventh count was committed as bearing on the question of jurisdiction and to the effect of the evidence pertaining thereto. The portion of the charge excepted to on this point is as follows:

Now, while the general rule laid down with reference to the other counts apply here, the inquiry is complicated by other elements which enter into the transaction. I must, therefore, call your attention to other claims and considerations.

This court generally has jurisdiction only of offenses committed in New Hampshire. So, if you should find that the abstraction complained in this count was fully completed in Massachusetts, then it is your duty to return a verdict of not guilty; but if you should find that he is guilty of abstraction conceived and partially accomplished in Massachusetts, but finally consummated in New Hampshire, then the offense is within the jurisdiction of the Federal court in this district of New Hampshire, and your verdict should be guilty.

Now, that jurisdiction is based upon another section of the statute, which I will read, as it will be more satisfactory than a statement by myself. Section 731 of the Revised Statutes of the United States provides that "when any offence against the United States is begun in one judicial district and completed in another it shall be deemed to have been committed in either, and may be dealt with, in-
95 quired of, tried, determined, and punished in either district in the same manner as if it had been actually and wholly committed therein."

So you see, if you inquire into this under the rules I have stated and find that there was wrongful abstraction, that it was conceived in Massachusetts and begun there, but that it was the purpose of making it complete and it was completed in New Hampshire, then it opens up the whole transaction here in this court and can be considered the same as though it all occurred in New Hampshire.

The theory of the respondent is this: In the first place they say that nothing wrong was done either here or in Massachusetts. Then they say if there was anything wrong in these transactions, which were, as you will remember, the making of these checks aggregating some forty thousand dollars, drawn by Mr. Putnam as president of the bank at Exeter, and the transactions which followed such drawing—if there was anything wrong in that it was begun and completed in Massachusetts.

The wrongful transaction of which the Government complains is that Mr. Putnam, the respondent, made checks on the National Bank of Redemption in Boston, some of them being for five thousand dollars and so on, whereby he withdrew from the funds of the Exeter bank existing there in Boston certain of their assets. Mr. Streeter argues that this was all right, that he had authority to do

it, that it was an honest transaction, but, he says, if you find it is wrong it was all done and consum-ated in Massachusetts, and hence we have nothing to do with it here. If it was consum-ated in Massachusetts we have nothing to do with it, and so the respondents must be acquitted on that count.

The Government's theory is that the transaction was not completed in Massachusetts; that, although it was commenced there, the checks drawn there, and the money received there, it was not effectually defrauding the bank of its rights until something had been done in New Hampshire, at Exeter, whereby the bank was induced, through deception or artifice, to surrender its credits.

Now, if the acts of drawing these checks and the conversion of the money were the sole charges in the indictment it would unquestionably be an offense committed in the district of Massachusetts and one with which we should have nothing to do here, but the charge in the indictment is the abstraction of moneys, funds, and credits. I desire to make myself understood, gentlemen. If this indictment merely charged the abstraction of money and said nothing about credits, it being conceded here that the money was withdrawn by means of these checks, it would be an offense committed wholly in Massachusetts and you would have nothing to do with it; but if under the instructions which I am about to give you find that the offence charged, which was the abstraction of moneys, funds, and credits, was not completed and had not been effectually consum-ated in Massachusetts, but was completed here in New Hampshire, then it would be an offence within the meaning of section 731 about which inquiry may be made here, and the question of guilt or innocence determined upon the whole transaction.

Mr. Branch, representing the Government, says this whole
96 transaction in Boston, so far as the drawing of the checks and the receiving of the money was concerned, was fraudulent. He argues that the bank at a meeting had adopted a resolution providing that the president should not draw checks, and that therefore the president had no authority and the president knew he had no authority to draw checks. This becomes material if you find it was so, because if he had the authority to draw the checks and did withdraw the funds, although he may — done it for the purpose of misappropriating and abstracting the money—if he had the authority to draw those checks it would become a past and completed act in Massachusetts, as you will see; but if he did not have authority, if he was acting outside of his authority and acting fraudulently, while the drawing of the checks was effectual in withdrawing the funds from the Bank of Redemption in Boston, it would not withdraw and abstract the credit of the bank in Exeter existing in its behalf in the Bank of Redemption in Boston, because, notwithstand- he drew the checks, if he had no authority to do it, the Exeter bank would still be in position to enforce its rights and receive the benefit of its credits which had been improperly and unlawfully interfered with by some unauthorized act in Boston, and while the money had gone and been misapplied the credit of the Exeter bank would be the same substantially and might be enforced. Now,

then, if the respondent conceived the plan of drawing these checks, obtaining the money, and abstracting or withdrawing the credit and had the intention at the time he drew the checks and withdrew the money to induce the directors at Exeter, through artifice and misrepresentation, to surrender that credit, then the transaction would be a continuous one and would be within the jurisdiction of this court. So, in order to get jurisdiction here and to enable you to pass upon this question, you must find that the offense was partly committed in Massachusetts—which it is conceded was so if there was any offence—and partly here—that is, in order to give this court jurisdiction, in order to make this offense committed part-y in Massachusetts and partly here, you must find that he conceived the plan not only of abstracting these moneys by means of the checks, but of making the transaction complete and effectual by withdrawing the credit existing in behalf of the Exeter bank. So if he came into New Hampshire and through artful deception and fraudulent misrepresentation, with the intention of making the abstraction begun in Massachusetts complete, induced the officers of the bank to surrender that credit, then he is guilty under this charge, which alleges that he wilfully and unlawfully abstracted the moneys, funds, and credits of the Exeter bank.

But if he had no such purpose, if he acted honestly with respect to the checks and got the money honestly, of course he should not be convicted; or if you find that at the time of the abstraction in Massachusetts he had no intention or scheme to make it effectual by inducing this surrender at Exeter whenever it should come to the attention of the bank officers at Exeter, then you should not find him guilty of the charge in this count. Something has been said about reconciliation sheets. Those are sheets, I suppose, on which the Bank of Redemption puts down the transactions involved in the banking business between that bank and the bank of Exeter,
97 while, on the other hand, the bank at Exeter has sheets on which it keeps its transactions with the Bank of Redemption and they exchange them once in two weeks. It is claimed here that the understanding always was that if there were any errors they were corrected on such trial balances.

If the respondent, understanding the manner of doing business, entered upon the scheme of abstracting the moneys by means of these checks, and as a part of it understood that when confronted with these balance-sheets in order to make the abstraction of the credit effectual he must induce the bank to surrender such credit, and did do that by making misrepresentations when presented with the sheet in New Hampshire, then it was a transaction begun in one jurisdiction and completed in another and within the statute to which I have called your attention.

I have, gentlemen, endeavored to state the questions involved here, and, while I have not restated the general rule as to reasonable doubt which I stated in the outset, it of course applies to all the propositions which it is necessary for the Government to make out.

You are to take the case and give it your best consideration, and pass between the respondent and the Government and say whether

you are satisfied under the rules stated that he is guilty in respect to any of these counts submitted to you, viz., the 1st, 2nd, and 7th counts.

As to this offence which I have been talking about in the last part of my instructions, when I referred to the one claimed to have been begun in Massachusetts and completed here, if you find him guilty under the rules which I have suggested, the fact that it was afterwards adjusted by his surrendering the bonds would not be an answer, and this for the reason that banks not only do business for profit to themselves, but they have the privilege of issuing currency, receiving deposits, and transacting business with the public generally, and if there was any irregularity, and if the parties undertook to settle between the offender and the stockholders or directors, it is not an answer to a criminal prosecution and should not be so considered by you in this inquiry.

I have given you the general rule that you may consider all his acts and doings as bearing upon the original intent. This surrender of the bonds may be considered in connection with that, but the fact that he turned over the bonds to make up for these checks, provided you find him guilty with respect to the original transaction, is not a bar to this prosecution, and you are not relieved from passing upon the question of his guilt, although the bonds were surrendered.

98 On January 9, 1895, by leave of court granted upon motion of the defendant, the defendant filed a motion in arrest of judgment, of which the following is a copy:

"Circuit Court of the United States, District of New Hampshire, October Term, 1894, *ss:*

UNITED STATES
v.
WARREN F. PUTNAM.

Motion in Arrest of Judgment.

And now, after verdict, but before judgment, comes the respondent above named and moves the court that judgment upon the seventh count and specification thereon filed by the district attorney as of December 11, 1894, be arrested, and that no judgment be entered against him upon said count and specification upon the verdict heretofore rendered, for the reason that said count and specification, as appears by the record, charges the respondent with the commission of 15 distinct offences against the laws of the United States. Wherefore the respondent says that said count, with said bill of particulars, is bad for duplicity and insufficient to support a judgment.

WARREN F. PUTNAM,
By his attorneys, STREETER & WALKER."

The court, after hearing, on Jan. 9, 1895, denied this motion and the defendant excepted.

WARREN F. PUTNAM,
By his attorneys, STREETER & WALKER.

Jan'y 31, 1895.

Allowed.
EDGAR ALDRICH,
Presiding Judge.

99 And on said 31st day of January sentence was pronounced as follows:

Upon the verdict under the second count of the indictment it is ordered that respondent be imprisoned in the State's prison at Concord for the period of five years, and while imprisoned in the State's prison at Concord he shall in all respects be subject to the same discipline and treatment as convicts sentenced by the courts of the State of New Hampshire, in which such State prison is situated, and while so confined therein shall be exclusively under the control of the officers having charge of the same under the laws of such State and stand committed till sentence be performed.

Upon the verdict under the seventh count it is ordered that respondent be imprisoned at the State's prison in Concord for the term of five years, and while so imprisoned in the State prison at Concord he shall in all respects be subject to the same discipline and treatment as convicts sentenced by the courts of the State of New Hampshire, in which such State prison is situated, and while so confined therein shall be exclusively under the control of the officers having charge of the same under the laws of such State and stand committed till sentence be performed.

Ordered that the imprisonment under the seventh count be concurrent with the imprisonment under the second count.

A true record.
Attest: FREMONT E. SHURTLEFF, *Clerk.*

100 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *District of New Hampshire,* } *ss:*

I, Fremont E. Shurtleff, clerk of the circuit court of the United States for the first circuit and district of New Hampshire, certify that the foregoing is a true copy of the record in the cause entitled No. 479, criminal docket, United States of America, by indictment, *v.* Warren F. Putnam, in said circuit court determined, and annexed hereto are true and attested copies of the petition for writ of error and assignment of errors filed in said court, order for supersedeas, order for bail pending writ of error, recognizance taken under such order, and an original citation on writ of error, with acknowledgement of service thereon, all constituting true and attested copies of the record and the proceedings in said cause, with all things concerning the same.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Concord, in said district, on this second day of March, in the year of our Lord one thousand eight hundred and ninety-five.

Seal of Circuit Court, New Hampshire.

FREMONT E. SHURTLEFF, *Clerk.*

101 Circuit Court of the United States, District of New Hampshire

UNITED STATES
v.
WARREN F. PUTNAM. } No. 479, Criminal Docket.

Petition for Writ of Error.

(Filed Feb. 5, 1895.)

To the honorable justices of the Supreme Court of the United States or any of the judges of the circuit court of the United States for the said district:

And now comes the defendant, Warren F. Putnam, and complains that in the records and proceedings and also in the rendition of judgment in a plea between the United States and the defendant, tried in the circuit court of the United States for said district at the October term, A. D. 1894, in which a judgment was rendered against him on the 31st day of January, 1895, manifest error hath intervened, to the great damage of the said defendant.

Wherefore he prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court aforesaid.

W. F. PUTNAM.
FRANK S. STREETER, *Of Counsel.*

A true copy.
Attest: FREMONT E. SHURTLEFF, *Clerk.*

102 Circuit Court of the United States, District of New Hampshire.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 479, Criminal Docket.

Assignment of Errors.

(Filed Feb. 5, 1895.)

Afterwards, to wit, on the second Monday of October, in the year of our Lord one thousand eight hundred and ninety-five, at the October term for one thousand eight hundred and ninety-five of the Supreme Court of the United States, at the Capitol, in the city of Washington and District of Columbia, comes the said Warren F. Putnam, by Frank S. Streeter, his attorney, and says that in the record and proceedings in the above-entitled matter there is a manifest error, to wit:

1. The circuit court has erred in admitting in evidence, by original and by copies, certificates of the Comptroller of the Currency purporting to organize and authorize "the National Granite State Bank of Exeter" to do business as a national banking association, as appears by the following statement:

"The Government offered in evidence a certificate of the Comptroller of the Currency, dated Dec. 6, 1893, attached to which certificate was an exemplified copy of the original certificate, dated May 15, 1865, authorizing the 'National Granite State Bank of Exeter" to do business as a national banking association.

"Said certificate and copy are in the following words:

103 V. H. C., E. M. B., A. R. S.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, } *ss:*

Under the provisions of section 884 of the Revised Statutes of the United States I, O. P. Tucker, deputy and acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original copy of the certificate of the Comptroller of the Currency authorizing the National Granite State Bank of Exeter, N. H., to commence the business of banking May 15, 1865, and of the whole of such original on file and of record in my office.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at [L. S.] the Treasury Department, in the city of Washington and District of Columbia, this 6th day of December, A. D. 1893.

O. P. TUCKER,
Deputy and Acting Comptroller of the Currency.

No. 1147.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, *May 15th*, 1865.

Whereas by satisfactory evidence presented to the undersigned it has been made to appear that "the National Granite State Bank of Exeter," in the town of Exeter, in the county of Rocking-
104 ham and State of New Hampshire, has been duly organized under and according to the requirements of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3, 1864, and has complied with all the provisions of said act required to be complied with before commencing the business of banking under said act: Now, therefore, I, Freeman Clark, Comptroller of the Currency, do hereby certify that "the National Granite State Bank of Exeter," in the town of Exeter, in the county of Rockingham and State of New Hamp-

shire, is authorized to commence the business of banking under the act aforesaid.

In testimony whereof witness my hand and seal of office this fifteenth day of May, 1865.

(S'g'd) FREEMAN CLARK,
Comptroller of the Currency.

"The Government also offered in evidence a certificate of the Comptroller of the Currency, dated Dec. 6, 1893, attached to which certificate was an exemplified copy of the original certificate, dated April 8, 1885, extending the authority of the 'National Granite State Bank of Exeter' to do business as a national banking association until April 12, 1905.

Said certificate and copy are in the following words:

105 V. H. C., E. M. B., A. R. S.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, } *ss:*

Under the provisions of section 884 of the Revised Statutes of the United States I, O. P. Tucker, deputy and acting Comptroller of the Currency, do hereby certify that the papers hereto attached is a true and complete copy of the original certificate of the Comptroller of the Currency authorizing the extension of the corporate existence of the National Granite State Bank of Exeter, N. H., until close of business April 12, 1905, and of the whole of such original on file and of record in my office.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at [L. S.] the Treasury Department, in the city of Washington and District of Columbia, this 6th day of December, A. D. 1893.

O. P. TUCKER,
Deputy and Acting Comptroller of the Currency.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, *April 8th*, 1885.

Whereas by satisfactory evidence presented to the undersigned it has been made to appear that "the National Granite State Bank of Exeter," in the town of Exeter, in the county of Rocking-
105½ ham and State of New Hampshire, has complied with all the provisions of the "Act of Congress to enable national banking association- to extend their corporate existence, and for other purposes," approved July 12th, 1882:

Now, therefore, I, Henry W. Cannon, Comptroller of the Currency, do hereby certify that "the National Granite State Bank of Exeter," in the town of Exeter, in the county of Rockingham and State of New Hampshire, is authorized to have succession for the period

specified in its amended articles of association, namely, until close of business on April 12, 1905.

In testimony whereof witness my hand and seal of office this 8th day of April, 1885.

[SEAL.]

H. W. CANNON,
Comptroller of the Currency.

No. 871. No. 1147.

"The Government also offered in evidence a certificate of the Comptroller of the Currency, dated August 10, 1869, attached to which certificate was an exemplified copy of the certificate of organization of the 'National Granite State Bank of Exeter,' dated August 10, 1869.

"Said certificate and copy are in the following words:

Organization Certificate.

Compared. F. C. C., N. M.

We, the undersigned, the directors of the Granite State Bank of Exeter, in the State of New Hampshire, hereby declare that the owners of two-thirds of the capital stock of said bank have authorized the directors of said bank to make the necessary organization certificate and to change and convert the said bank into a
106 national association under the provisions of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3, 1864; and by virtue of said authority and in accordance with the provisions and requirements of the forty-fourth section of said act we do hereby make and execute this organization certificate:

First. The name and title of this association shall be the National Granite State Bank of Exeter.

Second. The said association shall be located and continued in the town of Exeter, county of Rockingham and State of New Hampshire, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this association shall be one hundred thousand dollars ($100,00–), and the same shall be divided into one thousand shares of one hundred dollars each, as authorized by a vote of the stockholders of the Granite State bank.

Fourth. The name and residence of each of the stockholders of the said Granite State bank, which is to become a national bank under the provisions of the act of Congress aforesaid, and the number of shares of forty dollars each held by each stockholder are as follows:

(In the exhibit a list of the shareholders of the Granite State bank, showing name, residence, and number of shares, is inserted at this point. Said list, not being material to this case, can be omitted.)

5c. rev. stamp, canceled, C. C., April 12, 1865.

Fifth. This certificate is made in order that the said Granite State bank and the
107 stockholders thereof may avail themselves of the advantages of the aforesaid act, and that the said Granate State bank may be changed and converted into a national banking association under the name and title of the National Granite State Bank may be changed and converted into a national banking association, under the name and title of The National Granite State Bank of Exeter.

In evidence whereof we have hereunto set our hands this twelfth day of April, eighteen hundred and sixty-five.

ABNER MERRILL.
EDMUND ELLIOT.
WILLIAM W. STICKNEY.
JEREMIAH L. MERRILL.
CHAS. CONNER.
GEORGE G. SMITH.

[5c. rev. stamp, cancelled, "C. C., April 12th, 1863."]

STATE OF NEW HAMPSHIRE, *County of Rockingham,* } ss:

On this twelfth day of April, A. D. 1865, personally came before me, a notary public in and of said county, Abner Merrill, Chas. Conner, W. W. Stickney, Edmund Elliot, Jeremiah L. Merrill, and George Smith, directors of the Granite State bank, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

[SEAL OF NOTARY.] WILLIAM B. MORRILL,
Notary Public.

[5c. rev. stamp, cancelled, 4, 12, 1865, W. B. M.]

108 TREASURY DEPARTMENT, *Office of the Comptroller of the Currency,* } ss:

I certify the foregoing to be a true and complete copy of the original organization certificate of "the Nat'l Granite State B'k of Exeter," with the acknowledgements thereof, now on file and of record in this office and of the whole of such originals, and that such originals were so filed and recorded on the sixth day of May, A. D. 1865.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at
[SEAL.] the city of Washington, in the District of Columbia, this 10th day of August, A. D. 1869.

R. H. HUBBARD,
Comptroller of the Currency.

"The Government also offered in evidence the original certificate of the Comptroller of the Currency, dated April 8, 1885, authorizing

the 'National Granite State Bank of Exeter' to do business as a national banking association until April 12, 1905.

"Said certificate and copy are in the following words:

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *April 8th*, 1885.

Whereas by satisfactory evidence presented to the undersigned it has been made to appear that "the National Granite State
109 Bank of Exeter," in the town of Exeter, in the county of Rockingham and State of New Hampshire, has complied with all the provisions of the "Act of Congress to enable national banking associations to extend their corporate existence, and for other purposes," approved July 12th, 1882:

Now, therefore, I, Henry W. Cannon, Comptroller of the Currency, do hereby certify that "the National Granite State Bank of Exeter," in the town of Exeter, in the county of Rockingham and State of New Hampshire, is authorized to have succession for the period specified in its amended articles of association, namely, until close of business on April 12, 1905.

[L. S.] In testimony whereof witness my hand and seal of office this 8th day of April, 1885.

H. W. CANNON,
Comptroller of the Currency.

No. 1147.

"Against the defendant's objection the four certificates above described were admitted *de bene* pending a motion by the district attorney to amend the indictment, and the defendant excepted to each certificate as it was offered and admitted upon the grounds—

"That it was improper to admit evidence *de bene* in a case of this kind.

"And also on the ground of variance between the allegations of the indictment and the proof contained in the certificates of
110 authorization as to the name of the bank, of which the defendant was president.

"Also upon the ground of variance between the allegations and the proof as to the ownership of the property stated in the indictment.

"Also that the evidence had no tendency to prove the allegations of the indictment referring to the 'National Granite State bank.'

"After denying the motion to amend the court instructed the jury that the certificates could only be considered upon the question as to whether there was a national banking association at Exeter and as tending to show the character of the business which the association was authorized to do.

"The defendant excepted to this ruling on the same grounds as before."

2. The circuit court has erred in admitting the following evidence:

"CHARLES E. BYINGTON, witness for the prosecution, testified that he was connected with the National Granite State bank, first as clerk and as cashier, from 1878 to the date of the suspension of the bank, on or about July 27, 1893.

"On direct examination by Mr. Branch the following testimony was given:

(Verbatim.)

Q. I wish you would look at the books now shown you and state if you know what they are.

A. (Pointing to books.) This is a record of stockholders,
111 this also is a record of stockholders, and this is a directors' record.

Q. Of what?

A. Of the National Granite State bank.

Q. What is the other book which is now shown you (handing witness book)?

A. It is a directors' record of the National Granite State bank.

Q. I wish you would turn to the record containing the original organization of the bank.

A. That is it.

Mr. BRANCH: I offer this.

Admitted *de bene*.

Mr. Streeter objects and excepts on the ground—

That it is improper to admit evidence *de bene* in a case of this kind;

And also on the ground of variance between the allegations of the indictment and the proof as to the name of the bank of which the defendant was president;

Also upon the ground of variance between the allegation and the proof as to the ownership of the property stated in the indictment;

Also that the evidence had no tendency to prove the allegations of the indictment referring to the 'National Granite State bank.'

"The witness then read: 'The name and title of the association into which said Granite State bank is to be changed and converted shall be the National Granite State Bank of Exeter.'"

112 3. The circuit court has erred in permitting the prosecuting attorney to read from stockholders' and directors' records as appears in the following:

"Against the defendant's objection Mr. Branch reads from the stockholders' record certain sections entitled in said record 'By-laws of the National Granite State bank.' The sections read were sections 1, 3, 6, and 7. Said sections related to the annual meetings and record thereof, the officers of the bank, the duties and liabilities of the cashier, and the authority and duties of the directors.

"Section 6 is as follows:

'SECTION 6. The cashier of this bank shall be responsible for all the monies, funds, and valuables of the bank, and shall give bond, with security, to be approved by the board, in the penal sum of twenty thousand dollars, conditioned for the faithful and honest discharge of his duties as such cashier, and that he will faithfully apply and account for all such monies, funds, and valuables and deliver the same on proper demand to the order of the board of directors of this bank or to the person or persons authorized to receive them.'

"Mr. Branch read from the directors' records as follows:

'At a meeting of the directors of the National Granite State bank held on the 13th day of June, 1867, * * * the foregoing by-laws were presented and read by the cashier, and, on motion of Mr. J. L. Merrill, unanimously adopted, etc.'

"Also from page 16:

'The National Granite State bank. At a meeting of the directors of the National Granite State bank held this day, etc.'

The COURT: What is the object of this?

Mr. BRANCH: It is to show that the bank did business under the name set out in the indictment.

113 "Defendant excepted to each quotation from the records as above given on the ground that such evidence was immaterial and incompetent, inasmuch as no evidence had been offered to show the existence of a bank named 'the National Granite State bank,' as described in the indictment."

4. The circuit court has erred in admitting in evidence papers introduced by the Government to show that there was a bank at Exeter doing business under the name of "the National Granite State bank," as appears from the following:

"Against defendant's objection the following papers and documents were introduced in evidence by the Government to show that there was a bank at Exeter doing business under the name of the 'National Granite State bank.' The following were identified by the witness Charles E. Byington as used by the banking association at Exeter with which he was connected as clerk and cashier. Said papers and documents were put into the case as exhibits and marked by the clerk as such. Said exhibits are as follows:

"Exhibit 3. Deposit ticket, printed.
4. Small envelope, printed.
5. Postal card, printed.
6. Stamped envelope, printed.
7. Postal card, printed.
9. Envelope, printed, used in correspondence with office of comptroller.
10. Envelope, printed, used to send funds to reserve
114 agent.
11. Letter-head, printed.
12. Letter-head, printed.

13. Letter-head, printed, on which was written promissory note signed by defendant in his personal capacity.
14. Letter-head, printed, on which was written a receipt in defendant's handwriting.
15. Deposit slip, printed.
16. Two proxies, printed, for stockholders' meetings, with blanks filled out in defendant's handwriting.

"The following papers and documents were produced and identified by Arthur O. Fuller, witness for the prosecution, as received by him with the other papers and documents of the bank of which he was appointed receiver on Oct. 9, 1893:

"Exhibit 41. Two executions, dated Jan. 31, 1871, and 1872. The headings showing title of case were admitted.
Stockholders' records containing printed notices of annual meetings of 1876, 1877, and 1879 to 1893, inclusive.

"Exhibit 41½. Pass book 'National Granite State —, Exeter, New Hampshire, in account with Arthur O. Fuller, chairman,' in use Dec. 13, 1890, to Feb. 2, 1891.

" 42 and 43. Time notes to order of 'National Granite State bank,' dated respectively May 24
115 and May 25, 1892, signed by Lexington Hydraulic and Manufacturing Company.

"Exhibit 44. Receipt, dated Jan. 20, 1890, given by Arther O. Fuller to 'National Granite State bank.'

" 46. Personal mortgage, dated Oct. 21, 1890, Hilliard to 'National Granite State bank.'

" 47. Declaration of trust, dated Jan. 30, 1890, signed by Folsom in favor of 'National Granite State bank.'

" 48. Blank check, printed, on back of which written receipt, dated Aug. 4, 1891, A. O. Fuller to 'National Granite State bank.'

" 49. Check, dated May 16, 1893, drawn by W. F. Putnam on 'National Granite State bank.'

" 50. Check, dated July 6, 1892, drawn by C. H. Gilman on 'National Granite State bank.'

" 52. Letter, H. N. Smith to Byington, cashier of 'the National Granite State bank.'

" 53. Letter, dated June 21, 1893, American Loan & Trust Co. to 'National Granite State bank.'

" 54. Promissory note protested for benefit of 'National Granite State bank,' by C. E. Byington, notary public.

"Arthur O. Fuller, witness for the prosecution, also read from records of stockholders of the bank of which he was appointed receiver the following notice:

"The annual meeting of the stockholders of the National Granite State bank will be held at the banking-rooms on Tuesday, Jan. 11,

1876, at 2 o'clock p. m., for the choice of directors and the transaction of any other business that may legally come before said meeting.

W. F. PUTNAM, *Cashier.*

Exeter, Dec. 9, 1875.

116 "The notices of the annual meetings for 1877 and from 1879 to 1893, inclusive, were also read. These notices were substantially the same, and the bank was described therein by the name National Granite State bank.

"The Government introduced the foregoing evidence as tending to show the name under which the association of which the respondent was president was doing business, and for the purpose of showing the nature and locality of the business; and the court said:

'I will say to you, gentlemen, that the only effect of this evidence is its bearing upon the name of the bank; so you need not trouble yourselves to remember anything else.'

"In each of the above-described papers and documents the bank therein referred to was designated by the words 'National Granite State bank.' There was also evidence in the case tending to show that the bank in some instances used the name 'The National Granite State Bank of Exeter' in connection with its business. The defendant objected and excepted to each paper and document as it was put in evidence on the ground that it was incompetent and immaterial, inasmuch as no evidence had been offered to show the existence of a bank named the 'National Granite State bank,' as described in the indictment.

"The witness Byington testified that the bank of which Putnam was president and which did business at Exeter issued bills which it obtained from the Treasury Department, at Washington; that it forwarded its mutilated currency to the comptroller for redemption; made reports to the Treasury Department; was examined by
117 national bank examiners, and had bonds deposited with the Treasury Department, at Washington, on which it received the interest from Washington quarterly.

"Against the defendant's exception the Government was permitted to show that there was no other national bank located in Exeter except the National Granite State at the time it suspended and at the time that the indictment was found; that Putnam was connected with no other bank there or elsewhere; that the banks in Exeter were the Union Five Cent savings bank and the Squamscott savings bank; that the banking business carried on at Exeter under the name of the National Granite State bank was that of a national bank, and that such business was done under the authority derived from the Comptroller of the Currency.

"The foregoing evidence relating to the name of the bank was admitted for the purpose of showing that there was an association at Exeter, of which the respondent was president, carrying on the business of a national bank under the name of the National Granite State bank and acting within the general scope of authority conferred by the certificates of authorization.

"The certificates of authorization and organization referred to in this bill of exceptions were the only certificates of authorization and organization introduced in evidence by the Government and the only certificates issued to the association of which the respondent was president."

118 5. The circuit court has erred in admitting evidence as follows:

"Against the defendant's objection C. E. Byington, witness for the prosecution, on direct examination was allowed to state what other banks besides the bank of which he was cashier were doing business at Exeter at the time of the suspension, and also at the time the indictment was returned by the grand jury and to give the names thereof. The defendant excepted on the ground that the evidence was incompetent and immaterial."

6. The circuit court has erred in admitting in evidence the fifteen checks drawn in Boston by the defendant as president, as appears by the following:

"Against defendant's objection the Government was allowed to introduce in evidence in support of the seventh count fifteen checks drawn in Boston by the defendant as president on the National Bank of Redemption at Boston, which was the Boston correspondent of the bank of which Putnam was president. All these checks were dated at Boston, were payable to the order of parties doing business in Boston, and were duly paid in Boston by the National Bank of Redemption through the Boston clearing-house. These checks were dated on several dates, extending from Jan. 17 to May 6, 1893, both inclusive, and amounted in the aggregate to thirty-six thousand dollars. The following is a copy of one of said

119 checks:

"BOSTON, *Jan.* 17, 1893. No. —.

National Bank of Redemption

Pay to the order of American Loan & Trust Co. $5,000, five thousand dollars.

THE NATIONAL GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*

85 Devonshire, corner of Water St."

Indorsements: "Pay only through clearing-house, Jan. 18, 1893, to the Third National Bank of Boston. F. S. Davis, cashier." "For deposit only, to credit of American Loan & Trust Co., Boston, Mass. Jan. 17, 1893. N. W. Jordan, actuary."

The other checks are of the same tenor, and signed as follows:

The check of Jan. 17, 1893, for $5,000, is signed—

"THE NATIONAL GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of Jan. 23, 1893, for $5,000, is signed—
"NAT'L GRANITE STATE BANK OF EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 1, 1893, for $1,500, is signed—
"NATIONAL GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 1, 1893, for $5,000, is signed "and chg. ac. of—
THE NATIONAL GRANITE STATE BANK OF EXETER, N. H.,
By W. F. PUTNAM, *President.*"

The check of April 7, 1893, for $600, is signed—
"NATIONAL GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 7, 1893, for $672.05, is signed—
"NATIONAL GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 7, 1893, for $5,000, payable to order of American Loan & Trust Co., is signed—
"NAT'L GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

120 The check of April 8, 1893, for $100, is signed—
"NAT'L GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *President.*"

The check of April 21, 1893, for $25, is signed—
"THE NATIONAL GRANITE STATE BANK,
By W. F. PUTNAM, *President.*"

The check of April 25, 1893, for $52.95, is signed—
"THE NATIONAL GRANITE STATE BANK OF EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 7, 1893, for $50, is signed—
"NAT'L GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of April 7, 1893, for $5,000, payable to order of H. N. Smith, is signed—
"NATIONAL GRANITE STATE BANK, EXETER, N. H.,
By W. F. PUTNAM, *President.*"

The check of May 2, 1893, for $3,000, is signed—
"NATIONAL GRANITE STATE BANK,
EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of May 6, 1893, for $3,000, is signed—
"NATIONAL GRANITE STATE BANK,
EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

The check of May 6, 1893, for $2,000, is signed—
"NATIONAL GRANITE STATE BANK,
EXETER, N. H.,
By W. F. PUTNAM, *Pres.*"

"The defendant objected and excepted to each check separately on the ground that they were immaterial and incompetent."

7. The circuit court has erred in admitting the following evidence:

C. E. BYINGTON, witness for the prosecution, testified that T. King, vice-president of the National Bank of the Redemption, came
121 to Exeter during the first week of May, 1893, after several of the checks which have been already mentioned were drawn. He then testified as follows:

Q. Did you know what his errand there was—what he was there for?

(Objected to by Mr. Streeter.)

Q. Had it anything to do with these checks you have been speaking about?

(Objected to by Mr. Streeter.)

The COURT: I think you may state what he came there for. You need not state what he said.

The defendant objected on the ground that the testimony was incompetent and immaterial and tended to the prejudice of the defendant.

Q. What did he come there for?
The COURT: Without stating what he said, what did he do?
A. He got additional security or collateral for the overdraft we had in the National Bank of Redemption.
Q. Do you know how much the overdraft was and for what month?
A. It was something like between twenty-five and thirty thousand dollars, I think.

There is no objection or exception except as above.

8. The circuit court has erred in admitting the following evidence:

C. M. DORR, witness for the prosecution, testified that he was bank examiner; that he went to Exeter upon order of the comp-
122 troller to take charge of the National Granite State bank on Friday, July 28, 1893.

(Verbatim.)

Q. Whom did you find there as officers of the bank when you got there?

A. I found Mr. Byington in the front office, and I think Mr. Putnam was in the directors' room when I arrived.

(By Mr. BRANCH:) How long did Mr. Putnam stay there?

A. I think he was about the bank that day—that is, during the afternoon. I got there in the forenoon.

Q. What did you do first?

Mr. STREETER: I would like to inquire to which count this inquiry is directed.

Mr. BRANCH: First and second.

Mr. STREETER: I object to the general form of the inquiry.

The COURT: I think as a preliminary question it is all right.

The defendant excepted to this ruling.

A. Mr. Byington opened the vault, and I immediately looked through the loans to see whether there were any bonds or stocks owned by the bank, or as collateral to the bank, missing.

Q. What did you discover, if anything?

A. Nothing at that time. There was one bond missing, but I do not think I discovered it at that time. I went through them rather rapidly, of course; that was a bond held by the bank as collateral.

"The defendant excepted on the ground that the answer
123 introduced irrelevant and immaterial matter prejudicial to the defendant.

* * * * * * *

Q. Did you have any conversation with Mr. Putnam, in Boston, about those bonds?

A. I did not see Mr. Putnam in Boston.

Q. Or afterwards?

A. I cannot remember whether I had a little conversation with Mr. Putnam at the station in Exeter in regard to the bonds before he returned the first instalments or not.

Q. Did he ever, at any time or place, tell you what he had done with the bonds?

A. No, sir; he did not deny that he had them in his possession.

"Mr. STREETER: To this answer I except; it is not responsive. If a question had been put calling for this answer I should have objected to it."

9. The circuit court has erred in admitting the following evidence and in allowing the reading of the testimony taken before the grand jury, as appears by the following:

"During the direct examination of C. M. DORR, witness for the prosecution, the following occurred:

"(Verbatim.)

A. After I found that the bank had come into possession of these bonds and they were not to be found in the bank—Mr.
124 Putnam had gone to Boston, and I took the next train to Boston.

Q. Did you find him there?

A. I didn't succeed in finding him. I found Mr. Folsom, one of the directors, and consulted with him.

Q. Where did you find Mr. Putnam, if you found him at all?

A. I didn't find him that day. I didn't see him at all.

Q. When did you find him?

A. I don't think I found him at all. My mind has been occupied by other matters recently, and this matter is not very clear in my mind, but, as I remember it, he returned a portion of those bonds to me through his father.

Q. Did you have any conversation with Mr. Putnam in Boston about those bonds?

A. I didn't see Mr. Putnam in Boston.

Q. Or afterwards?

A. I cannot remember whether I had a little conversation with Mr. Putnam at the station in Exeter, in regard to the bonds, before he returned the first installment or not.

Q. Did he ever, at any time or place, tell you what he had done with the bonds?

A. No, sir; he didn't deny but he had them in his possession.

Mr. STREETER: To this answer I except. It is not responsive. If a question had been put calling for this answer, I should have objected to it.

Q. Did he ever at any time tell you what he had done with these bonds?

125 A. Not that I now recollect.

Mr. BRANCH: I propose to ask this witness a leading question, because I am taken by surprise at his answer. I have his testimony before the grand jury, and I wish to ask him if he did not testify to certain things before the grand jury.

The COURT: You may do that.

Mr. STREETER: To that I object and except.

The COURT: It is a matter of discretion with the court to allow counsel on either side who say that they are surprised to ask such question. It is not a matter of exception.

(By Mr. BRANCH:)

Q. (Referring to minutes and apparently reading for the purpose of putting the question.) Do you now recollect that you testified before the grand jury that when you discovered those bonds were gone you went to Boston and learned that Mr. Putnam had them,

and that he acknowledged to you he had those bonds on the 3rd day of August? Did you not so testify before the grand jury?

A. If it is a matter of record I suppose that it is so. Mr. Putnam done considerable of the business by letters.

Q. I am asking if you did not so testify before the grand jury.

A. If it is a matter of record I do not dispute the record.

Q. Do you not recollect that fact that you asked him what he had done with them?

126 Mr. STREETER: I still object and except to this because it is the record taken before the grand jury and should not be introduced here; it is improper, and I object to it.

The COURT: I do not think you ought to say it is improper after the court has ruled that it is.

Mr. STREETER: I beg your honor's pardon; I did not understand that you had ruled on this point.

The COURT: It is a thing often done, and when counsel say they are surprised by the way a witness recollects a thing it is within the discretion of the court to allow counsel to direct the attention of the witness to something which may refresh his recollection.

By the COURT:

Q. Do you recollect this conversation in view of your attention being now called to it?

A. I do not recall distinctly where I had that interview, but I think it must have been at the station at Exeter.

Q. It is not a question of where it must have been, but whether you recall it now.

(By Mr. BRANCH:)

Q. Let me refresh your recollection a little further. Did you testify before the grand jury that you said to him something about the bond, and he said, "Mr. Dorr, I will state to you I am not going away"?

A. Yes, sir; I did.

Mr. STREETER: I object to the reading here before this tribunal of the records taken before the grand jury—records of the grand-jury room—and I renew the objection I took when my brother first put it in, two or three minutes ago. I renew the ob-

127 jection I thne took to the production of grand-jury records before this court.

Mr. BRANCH: I am not.

The COURT: It is competent.

Mr. STREETER: I except.

Q. And did he not say, "I will get the bonds for you as soon as I can"?

A. Yes; I can assent to that.

The COURT: It must be understood that the putting into the question a conversation is merely done for the purpose of direct-

ing the witness's attention to the matter, and that it is not in, unless the witness remembers the conversation and states it here.

Mr. STREETER: If your honor will pardon me, my exception to its being read is in the record and I do not want to be deprived of that.

The COURT: That is all right."

128 10. The circuit court has erred in refusing to admit the evidence as appears in the following statement and offer of proof:

"C. E. BYINGTON, witness for the prosecution, testified as follows:

"(Verbatim.)

By Mr. BRANCH:

Q. Who was president of this bank from Jan. 1, 1893, till its suspension—the National Granite State bank?

A. Mr. Warren F. Putnam.

Q. Who were the directors?

A. I suppose they were Mr. Putnam, Mr. Eben Folsom, Mr. Horton, Mr. Patten, and Mr. Burlingame.

Q. Who acted as clerk?

A. Mr. Putnam, the president.

* * * * * * *

Q. What relation did Mr. Putnam bear to the Leavenworth electric railway?

A. He was president.

Q. What was his connection with the Lexington Hydraulic Company?

A. President of that also.

Q. Did he say anything about what he had used this money for that he had drawn out?

A. I do not think I heard him.

* * * * * * *

Q. I understood you to say that on the 24th of May, when this twenty-six-thousand-dollar matter came up, they took as part payment for that twenty-five thousand dollars' worth of Lexington bonds.

129 A. Of Leavenworth bonds.

Q. At the same time they took ten thousand dollars of the bonds of the Lexington Company?

A. Yes, sir.

Q. Was this bank that you were connected with and Mr. Putnam was connected with, which issued bills as you have described and made these returns, located in Exeter?

A. Yes, sir.

The witness also testified, in answer to questions of Mr. Branch, that the Lexington and Leavenworth Companies were Mr. Putnam's paramount interest.

On cross-examination by Mr. Streeter, the witness testified as follows:

By Mr. STREETER:

Q. How long before July, 1893, had Mr. Putnam been president of the Leavenworth Company, if you know?

A. I do not know.

Q. Had he for some time prior thereto?

A. I do not think it had been in existence a great while.

Q. You may state whether you did not know that Mr. Putnam held large amounts of the Leavenworth and Lexington bonds and stock on his own account.

A. I understood so in a general way; yes.

Q. And that he was buying and selling more or less?

A. Yes, sir.

Q. That he had on hand more or less of these securities?

A. Yes, sir.

Q. What percentage of the stock of the National Granite State Bank of Exeter did Mr. Putnam own during the first six months of 1893?

130 Mr. BRANCH: I object.

The COURT: I should have doubt about this.

Mr. STREETER: The purpose is plain. This man was standing at the head of this bank. If he was a mere nominal owner of this stock, then his transactions might be viewed in one way. If he was three-fourths owner, which we offer to show, then his care in looking out that the property should not be depreciated would present another view. It is for the purpose of showing his relations to the bank and his ownership of the stock, we maintain, has a bearing upon his good intent with reference to the purchasing of these securities for the bank and in dealing with the bank's funds. It makes a little difference whether he owned all of the stock or did not own any of it.

Mr. BRANCH: Not the slightest. It has no bearing upon his *bona fide* intent to use them for the benefit of the bank.

Mr. STREETER: I do not care to argue that question now.

The COURT: Without regard to that, the rule in this court is that the cross-examination shall be limited to the subject-matter of the direct, and even if that is something which it is competent to show in your case I do not think it is competent to be brought out in this way.

Mr. STREETER: You- ruling has been that on the question of intent the door is pretty wide open. This witness has been produced here for the purpose of showing facts from which intent might be drawn. That is a material question, and it is upon that same

131 question that I put this inquiry—the question of intent.

The COURT: I do not say how I shall rule when this evidence is offered at the proper time. The Government has not opened up affirmatively the ownership of stock.

Mr. STREETER: The question of intent has been opened up.

The COURT: I don't think it is worth while to argue the question."

11. The circuit court has erred in admitting evidence, as appears from the following:

"Against defendant's objection testimony was introduced on direct examination of one of the directors of the bank tending to show that about one year prior to the time when the defendant, as president, drew the checks on the Bank of Redemption, as appears above in the bill of exceptions, the board of directors of the bank had passed a vote that no one but the cashier should have authority to draw checks on account of the bank; that Mr. Putnam was present at that meeting; that the vote was never recorded in the records.

"The defendant excepted on the ground that the evidence was immaterial and incompetent for the reason that the president of a national bank has authority to draw checks as a necessary incident to his official position, and that such a vote by the directors could not affect his right so long as he remained president of the bank or acted as such with the consent of the directors. The above evidence was introduced on the question of intent and was so limited."

12. The circuit court has erred in denying the defendant's
132 motion to direct a verdict for the defendant on the seventh count, as appears by the following:

"At the close of the Government's case the defendant's counsel made the following motion:

'Circuit Court of the United States, District of New Hampshire.

UNITED STATES
v.
WARREN F. PUTNAM. } No. 479, Criminal Docket.

The court having determined and notified the counsel for both parties that he should direct or request a verdict for the respondent upon all the counts in the indictment except the first, second, and seventh, the respondent now renews his motion that the court direct or request a verdict for the defendant upon the seventh count:

1st. Because the evidence of abstraction is not sufficient to warrant a verdict against the defendant.

2nd. Because of the variance between the allegations in the indictment and proof of place where the alleged offence was committed.

3rd. Because the bill of particulars submitted by the Government to respondent's counsel December 11, 1894, gave notice that the Government under this count would rely solely upon the abstraction of moneys by means of the checks set forth in said bill of particulars, all of which were drawn by the respondent in Boston upon the National Bank of Redemption in Boston and paid by the said National Bank of Redemption in the city of Boston, and because the Government has introduced no evidence that the alleged offence of abstraction or any essential element of said
133 & 134 offence was committed elsewhere than in the city of Boston, outside the jurisdiction of this court.

4th. Because the several offences of abstraction as alleged in said

seventh count and in the bill of particulars were finally completed by the payment of the checks at the National Bank of Redemption, in the city of Boston, not within this district, and because there is no evidence that any essential part of the offence charged was committed within this district.

(S'g'd) WARREN F. PUTNAM,
By his attorneys, STREETER & WALKER.

Filed Dec. 27, 1894.'

"The evidence adduced by the Government in support of the seventh count tended to prove the following facts:

The bank at Exeter kept an account with the National Bank of Redemption, in Boston, Massachusetts, which was designated by the term 'reserve agent.' From time to time deposits were made and checks were drawn by the bank at Exeter on this account.

"Upon the 1st and 16th of each month statements called reconciliation sheets, showing deposits and checks on this account, were sent by the reserve agent to the bank at Exeter. The cashier of the latter compared the items on the reconciliation sheets with the account on his books, and if the two coincided he so notified the cashier of the reserve agent, and the account was considered settled to that time. If the accounts did not agree, the discrepancies were noted and finally adjusted by correspondence between the two cashiers.

135 "Evidence was admitted, subject to defendant's exception, tending to show that at a meeting of the directors of the bank at Exeter, held about one year prior to the alleged inlawful drawing of checks by the defendant at Boston, a vote had been passed by the board of directors that no one but the cashier should thereafter have authority to draw checks against the account with the reserve agent; that the defendant was present at that meeting and acted as clerk of the board.

"Such a vote was never recorded in the directors' records and the reserve agent was never notified of it.

"The checks mentioned in Mr. Branch's letter to Mr. Streeter dated Dec. 11, 1894, to the seventh count were all drawn in Boston between Jan. 16 and May 6, 1893, both inclusive. They were delivered to the payees thereof in Boston in return for cash or funds in the form of checks or drafts. The checks drawn by the defendant were put into process of collection through various national banks in Boston, and, having duly passed through the Boston clearing-house, were paid by the National Bank of Redemption at Boston out of funds in its hands belonging to the bank at Exeter, and proper entries were made upon the books of the reserve agent debiting the bank at Exeter and crediting itself with the amount so paid.

"Two of the checks mentioned in the bill of particulars, viz., the check dated Jan. 17, 1893, for five thousand dollars, payable to the order of the American Loan and Trust Company of Boston, signed by Warren F. Putnam, president, and that of Jan. 23, 1893,

136 of the same amount and tenor, were produced and put in evidence by the prosecution. The evidence tended to show

that the defendant delivered said checks to the payee, the American Loan and Trust Company, on the dates thereof and received in exchange for the same drafts for the same amount, drawn by the American Loan and Trust Company on Winslow, Lanier & Co., of New York. These drafts were paid by Winslow, Lanier & Co. at New York on Jan. 18 and 24, 1893, respectively, and the endorsement thereon showed that they had been used by the respondent for some purpose, the nature of which was not indicated by the evidence, except as appears from this bill of exceptions. The checks of Jan. 17 and 23, 1893, were duly presented to the reserve agent through the clearing-house, paid, and charged off as above described.

"That all of the foregoing-named checks, except the first two checks, dated Jan. 17 and 23, 1893, respectively, were drawn between the first day of April, 1893, and the 6th day of May, 1893. Neither the cashier nor the directors of the bank knew that the April and May checks had been drawn until about the 1st of May, when the reconciliation sheet with the accompanying checks were received from the National Bank of Redemption; that Putnam declined to make any explanation as to why the checks had been drawn or what he had done with the money, and the evidence tended to show that he evaded making any explanation until about the 24th of May; that then he stated to the directors that the money had been used to put into the Leavenworth Electric Railway Company and the Lexington Hydraulic Company; that at this
137 time the amount of money which he had withdrawn from the funds of the bank amounted to about $36,000, to wit, $10,000 on January 17 and 23 and $26,000 in April and May.

"CHARLES E. BYINGTON, witness for the prosecution, testified as follows:

Q. How often did they send those reconciliation sheets?
A. Twice a month.
Q. At what time?
A. The middle and the first of the succeeding month.
Q. Did you get any checks or vouchers at the middle of the month?
A. Probably I did, the first of February.
Q. That would not be the middle of the month?
A. It would not.
Q. When did you get your vouchers back?
A. The first of the month.
Q. Did you get your reconciliation sheets twice a month?
A. Twice a month.
Q. When that reconciliation sheet came in on the first of February, 1893, do you remember about those two checks of five thousand dollars, one on the 17th and the other on the 23rd of January, drawn to the order of the American Loan and Trust Company?
A. I think I do, sir.
Q. Look at those first two checks (handing witness a package of checks) and say whether or not you ever saw them before.

A. I have seen them.
Q. Where?
A. I have seen them in the National Granite State bank, at Exeter.
138 Q. Can you tell when or about when?
A. It was some time the first of February, 1893.
Q. Did you have any conversation with Mr. Putnam about those two drafts?
A. Yes, sir.
Q. What was it?
A. Well, we were—we had given our note for ten thousand dollars to this American Loan and Trust Company some time previously to this. I asked Mr. Putnam what those were for, and he said they were to pay that loan. I asked him if I should enter it on the books as paid, and he said yes.
Q. Did you do so?
A. I did so.
Q. And credited that amount to the National Bank of the Redemption?
A. Yes, sir.
Q. Did you know those checks had been drawn till they came back with your vouchers on the first day of February?
A. No, sir; I think not.

"From all this evidence the Government contended that this conversation took place in Exeter about February 1st, 1893, when the reconciliation sheet for January came back from the National Bank of Redemption with the vouchers for that month, among which were the two checks for $5,000 each drawn January 17 and 23, respectively, and that the entry which was made by Byington, the cashier, charging off the note of $10,000 and crediting the National Bank of Redemption with the amount and allowing it on the account current was made immediately after this conversation and in accordance with Putnam's instructions so to do to the cashier.
139 "Some time in May following Byington discovered that the note had not been paid, and upon interrogating Putnam about it he, Putnam, stated that when he said it was paid 'he lied about it.'

"The Government offered no evidence, except as appears from this bill of exceptions, of any acts committed by the defendant within the district of New Hampshire connected in any way with the alleged unlawful abstraction.

"The court denied the defendant's motion, and the defendant excepted on the following grounds:

1. That the evidence showed that the abstraction, if committed at all, was completed in Boston, Massachusetts, outside the jurisdiction of this court.

2. That the evidence of criminal acts committed within this jurisdiction is not sufficient to establish the jurisdiction of this court over this cause.

3. That the evidence shows that the abstraction, if committed at

all, was completed, so far as the defendant was concerned, when the checks by means of which the abstraction was alleged to have been accomplished were paid by the National Bank of Redemption.

4. That the act alleged to have been committed by the defendant within this district did not constitute an offence of the character charged in the seventh count and the bill of particulars annexed thereto.

5. That there was a substantial variance between the locality alleged in this count and that indicated by the proof."

140 & 141 13. The circuit court has erred in charging the jury as follows: After the judge's charge was given and before the jury retired, the defendant excepted to that portion of the judge's charge relating to the admissibility and effect of the certificates of authorization and of organization of the National Granite State Bank of Exeter.

That portion of the charge excepted to on this point is as follows:

After stating the reasonable-doubt rule, the judge said:

In order to present to you the questions involved it is necessary, perhaps, for me to read from the statute or act of Congress upon which this prosecution is based. Congress has provided the way in which this banking business shall be conducted and had provided that "every president, director, cashier, teller, clerk, or agent of any association who embezzles, abstracts, or wilfully misapplies any of the moneys, funds, or credits of the association" shall be punished so and so. So you see that a prosecution under this statute involves the Government in the necessity of establishing a banking association, and that the respondent was an officer of such banking association.

If certain men should associate themselves together without color of authority from the General Government and pretend to do a banking business, however fraudulently they might carry it on, they would not be within the meaning of this statute. This statute is simply intended to regulate the national banking business carried on under its authority by gentlemen associating themselves together for that purpose.

142 "So it is incumbent upon the Government to show that there was a national bank. In other words, to show that there was a national banking association carrying on business at Exeter under the authority or at least claiming to be under the authority of the Treasury Department, and it must appear that they were doing business within the scope of that authority, and that this respondent was acting or exercising the office of president of a national bank at the place and within the general scope of authority intended to be conferred.

"So you must find that this association of gentlemen were doing business as a national banking association, and that they were doing business within the line of authority conferred by the certificate of authorization.

"The certificate of authorization, which is one of the original papers creating this association—in other words, which authorizes a bank-

ing association at Exeter—proceeds to designate the association under the name of 'the National Granite State Bank of Exeter.'

"Now, it is objected that there is what lawyers call a variance between the proof and the language in the indictment; and there is to this extent, that the words 'of Exeter' are omitted in describing the bank in the indictment. So this certificate of authorization can only be considered by you upon the first questions I have submitted, viz: Was there a national banking association at Exeter? Was it authorized? Was it organized? Was it doing business under the authority conferred and of the kind and character contemplated by the certificate? If there was a bank there and they claimed to be doing business under the authority of the General Government, then it was a bank within the meaning of this statute, and if the respondent was president of it and claimed to exercise the privileges incident to such an office he is within the meaning of the statute.

"I have said that this certificate can only be considered upon the general question whether this was a national bank at Exeter, doing business within the line of authority conferred by the court; and upon the same question you may consider the nature of their business, what they were doing, and the manner in which they were transacting the business of the alleged association.

"If you should find these gentlemen were associated together as a banking association and were at the locality and place named, acting under the general authority of the Treasury Department and within the scope of the authority conferred, then it was a banking association within the meaning of this statute to which I have called your attention.

"If the Government has succeeded in establishing these particulars, still they must go further and establish that the respondent was an officer of the banking association, because the statute is directed against bank officers in their official capacity as acting officers of a national bank.

"As I have said, the defendant claims there is a variance between the name used in the certificate of authorization and the name set out in the indictment. The variance is this: The name of the
143 bank as created was 'the National Granite State Bank of Exeter,' while the indictment charges that the respondent was 'then and there the president of a certain national banking association then and there known and designated as the National Granite State bank, which said association had been theretofore created and organized under and by virtue of the laws of the United States of America and which said association was then and there acting and carrying on a national banking business at said Exeter under the laws aforesaid.' Now, you will see that the variance consists in the description of the official capacity of the respondent in omitting the words 'of Exeter' from the name. Otherwise the name — set out in the indictment precisely as it is in the certificate of authorization. The further allegation in the indictment is that they were known and designated by the name therein set forth, and that they were a national banking association. The position of the

respondent is that there is a variance, and there is. I instruct you that there is a variance, and for that reason you should consider this certificate of authorization simply upon the original question of whether or not there was a national banking association there.

"The Government answers this objection of variance by saying the banking association adopted and used and was generally known by a slightly different name; that the association was known and designated as the National Granite State bank, carrying on a national banking business at Exeter; and the Government has introduced evidence tending to show that the association did adopt a different name and did drop the words 'of Exeter' generally in its business and used it in the bank books, upon their check books and letter-heads, and in their correspondence with the executive department of the General Government.

"If this be so, the Government may, notwithstanding the variance which I have stated, proceed against the respondent either under the name by which the association was originally christened or under the name of its adoption, provided it was so designated and so generally known by the public, including, of course, the respondent and the department of the Government under whose authority they were carrying on the business as a banking association. So, notwithstanding the fact that I say there is a variance, if you should be satisfied that this respondent was connected as president with a bank exercising the authority and privileges of a national bank and adopting and using the name of 'the National Granite State bank,' omitting the words 'of Exeter;' that they were using such name in their business; that the president understood it and designated it as such in the records and papers of the bank, and that the Comptroller of the Currency understood that they were using such a name, then he is an officer of a national banking association and responsible under the laws, providing he is guilty of improper conduct. Then you will come to what we call the merits of the case and say whether he is guilty or not.

"I will repeat: If the Government has established all this and you find that the respondent was president of a banking association acting under the authority of the General Government; that he ac-
144 cepted the position of president and assumed and exercised the duties thereof, knowing that such association had adopted the name of 'the National Granite State bank,' dropping the words 'of Exeter,' and that, being so designated, was generally known as such and was suffered to go on doing business under such name and at the place indicated by the certificate of authorization, then he was president of a banking association within the meaning of section 5209 of the Revised Statutes, which is, as I have stated, directed against any president or other officer of a national banking association who commits a wrong within the meaning of such section.

"If you find all these questions in the affirmative, you will then come to the questions presented by the various counts in the indictment which are to be submitted."

145 14. The circuit court has erred in charging the jury as follows: After the judge's charge was given and before the

jury retired the defendant excepted to that portion of the charge relating to the question of variance between the name used in the indictment to designate the bank and that proved by the certificate of authorization and organization.

That portion of the charge excepted to on this point is the same as that set out under the 13th assignment of error.

15. The circuit court has erred in charging the jury as follows: After the judge's charge was given and before the jury retired the defendant excepted to that portion of the charge relating to the admissibility and effect of the evidence adduced by the Government to prove that the bank carried on business under the name of the National Granite State bank.

That portion of the charge excepted to on this point is the same as that set out under the 13th assignment of error.

16. The circuit court has erred in charging the jury as follows: After the judge's charge was given and before the jury retired the defendant excepted to that portion of the judge's charge relating to the right of the Government to proceed against the defendant as president of a bank described by either of the two names, viz., "the National Granite State bank" and "the National
146 Granite State Bank of Exeter."

That portion of the charge excepted to on this point is the same as that set out under the 13th assignment of error.

17. The circuit court erred in charging the jury as follows. After the judge's charge was given and before the jury retired the defendant excepted to all that portion of the charge relating to the place where the abstraction alleged in the seventh count was committed as bearing on the question of jurisdiction and to the effect of the evidence pertaining thereto.

That portion of the charge excepted to on this point is as follows:

"Now, while the general rules laid down with reference to the other counts apply here, the inquiry is complicated by other elements which enter into the transaction. I must therefore call your attention to other claims and considerations.

This court, speaking generally, has jurisdiction only of offenses committed in New Hampshire. So, if you should find that the abstraction complained of in this count was fully completed in Massachusetts, then it is your duty to return a verdict of not guilty; but if you should find that he is guilty of abstraction conceived and partially accomplished in Massachusetts, but finally consum-ated in New Hampshire, then the offense is within the jurisdiction of the Federal court in the district of New Hampshire, and your verdict should be guilty.

Now, that jurisdiction is based upon another section of the statute, which I will read, as it will be more satisfactory than a statement by myself. Section 731 of the Revised Statutes of the United States provides that 'when any offense against the United States is begun in one judicial district and completed in another it shall be deemed to have been committed in either and may be dealt with, inquired of, tried, determined, and punished in either district in the

same manner as if it had been actually and wholly committed therein.'

"So you see, if you inquire into this under the rules I have stated and find that there was a wrongful abstraction; that it was conceived in Massachusetts and begun there, but that it was the purpose of making it complete and it was completed in New
147 Hampshire, then it opens up the whole transaction here in this court and can be considered the same as though it all occurred in New Hampshire.

"The theory of the respondent is this: In the first place they say that nothing wrong was done either here or in Massachusetts. Then they say if there was anything wrong in these transactions, which were, as you will remember, the making of these checks aggregating some forty thousand dollars, drawn by Mr. Putnam as president of the bank at Exeter, and the transactions which followed such drawing—if there was anything wrong in that it was begun and comp-eted in Massachusetts.

"The wrongful transaction of which the Government complains is that Mr. Putnam, the respondent, made checks on the National Bank of Redemption in Boston, some of them being for five thousand dollars and so on, whereby he withdrew from the funds of the Exeter bank existing there in Boston certain of their assets. Mr. Streeter argues that this was all right, that he had authority to do it, that it was an honest transaction, but, he says, if you find it is wrong it was all done and consum-ated in Massachusetts, and hence we have nothing to do with it here. If it was consum-ated in Massachusetts we have nothing to do with it, and so the respondent must be acquitted on that count.

"The Government's theory is that the transaction was not completed in Massachusetts; that, although it was commenced there, the checks drawn there, and the money received there, it was not effectually defrauding the bank of its rights until something had been done in New Hampshire, at Exeter, whereby the bank was induced, through deception or artifice, to surrender its credits.

"Now, if the acts of drawing these checks and the conversion of the money were the sole charges in the indictment it would unquestionably be an offense committed in the district of Massachusetts and one with which we should have nothing to do here, but the charge in the indictment is the abstraction of moneys, funds, and credits. I desire to make myself understood, gentlemen. If this indictment merely charged the abstraction of money and said nothing about credits, it being conceded here that the money was withdrawn by means of these checks, it would be an offense committed wholly in Massachusetts and you would have nothing to do with it; but if under the instructions which I am about to give you find that the offense charged, which was the abstraction of moneys, funds, and credits, was not completed and had not been effectually consum-ated in Massachusetts, but was completed here in New Hampshire, then it would be an offense within the meaning of section 731 about which inquiry may be made here, and the question of the guilt or innocence determined upon the whole transaction.

"Mr. Branch, representing the Government, says this whole transaction in Boston, so far as the drawing of the checks and the receiving of the money was concerned, was fraudulent. He argues that the bank at a meeting had adopted a resolution providing that the president should not draw checks, and that
148 therefore the president had no authority and the president knew he had no authority to draw checks. This becomes material if you find it was so, because if he had the authority to draw the checks and did withdraw the funds, although he may have done it for the purpose of misappropriating and abstracting the money—if he had authority to draw those checks it would become a past and completed act in Massachusetts, as you will see; but if he did not have authority, if he was acting outside of his authority and acting fraudulently, while the drawing of the checks was effectual in withdrawing the funds from the Bank of Redemption in Boston, it would not withdraw and abstract the credit of the bank in Exeter existing it its behalf in the Bank of Redemption in Boston, because, notwithstanding he drew the checks, if he had no authority to do it, the Exeter bank would still be in position to enforce its rights and receive the benefits of its credits which had been improperly and unlawfully interfered with by some unauthorized act in Boston, and while the money had gone and been misapplied the credit of the Exeter bank would be the same substantially and might be enforced. Now, them, if the respondent conceived the plan of drawing these checks, obtaining the money, and abstracting or withdrawing the credit and had the intention at the time he drew the checks and withdrew the money to induce the directors at Exeter, through artifice and misrepresentation, to surrender that credit, then the transaction would be a continuous one and would be within the jurisdiction of this court. So, in order to give jurisdiction here and to enable you to pass upon this question, you must find that the offense was partly committed in Massachusetts—which it is conceded was so if there was any offense—and partly here—that is, in order to give this court jurisdiction, in order to make this offense committed partly in Massachusetts and partly here, you must find that he conceived the plan not only of abstracting the moneys by means of the checks, but of making the transaction complete and effectual by withdrawing the credit existing in behalf of the Exeter bank. So if he came into New Hampshire and through artful deception and fraudulent misrepresentation, with the intention of making the abstraction begun in Massachusetts complete, induced the officers of the bank to surrender that credit, then he is guilty under this charge, which alleges that he wilfully and unlawfully abstracted the moneys, funds, and credits of the Exeter bank.

"But if he had no such purpose, if he acted honestly with respect to the checks and got the money honestly, of course he should not be convicted; or if you find that at the time of the abstraction in Massachusetts he had no intention or scheme to make it effectual by inducing this surrender at Exeter whenever it should come to the attention of the bank officers at Exeter, then you should not find him guilty of the charge in this count.

"Something has been said about reconciliation sheets. Those are sheets, I suppose, on which the Bank of Redemption puts down the transactions involved in the banking business between that
149 bank and the bank at Exeter, while, on the other hand, the bank at Exeter has sheets on which it keeps its transactions with the Bank of Redemption and they exchange them once in two weeks. It is claimed here that the understanding always was that if there were any errors they were corrected on such trial balances.

"If the respondent, understanding the manner of doing business, entered upon the scheme of abstracting the moneys by means of these checks, and as a part of it understood that when confronted with these balance-sheets in order to make the abstraction of the credit effectual he must induce the bank to surrender such credit, and did do that by making misrepresentations when presented with the sheet in New Hampshire, then it was a transaction begun in one jurisdiction and completed in another and within the statute to which I have called your attention.

"I have, gentlemen, endeavored to state the questions involved here, and, while I have not restated the general rule as to reasonable doubt which I stated in the outset, it of course applies to all the propositions which it is necessary for the Government to make out.

"You are to take the case and give it your best consideration, and pass between the respondent and the Government and say whether you are satisfied under the rules stated that he is guilty in respect to any of these counts submitted to you, viz., the 1st, 2nd, and 7th counts.

"As to this offence which I have been talking about in the last part of my instructions, when I referred to the one claimed to have been begun in Massachusetts and completed here, if you find him guilty under the rules which I have suggested, the fact that it was afterwards adjusted by his surrendering the bonds would not be an answer, and this for the reason that banks not only do business for profit to themselves, but they have the privilege of issuing currency, receiving deposits, and transacting business with the public generally, and if there was any irregularity, and if the parties undertook to settle between the offender and the stockholders or directors, it is not an answer to a criminal prosecution and should not be so considered by you in this inquiry.

"I have given you the general rule that you may consider all his acts and doings as bearing upon the original intent. This surrendering of the bonds may be considered in connection with that, but the fact that he turned over the bonds to make up for these checks, provided you find him guilty with respect to the original transaction, is not a bar to this prosecution, and you are not relieved from passing upon the question of his guilt, although the bonds were surrendered."

149½ 18. The circuit court has erred in refusing a motion of the defendant in arrest of judgment, as appears by the following:

"On January 9, 1895, by leave of court granted upon motion of the defendant, the defendant filed a motion in arrest of judgment, of which the following is a copy:

Circuit Court of the United States, District of New Hampshire, October Term, 1894, *ss:*

UNITED STATES
v.
WARREN F. PUTNAM.

Motion in Arrest of Judgment.

And now, after verdict, but before judgment, comes the respondent above named and moves the court that judgment upon the seventh count and specification thereon filed by the district attorney as of December 11, 1894, be arrested, and that no judgment be entered against him upon said count and specification upon the verdict heretofore rendered, for the reason that said count and specification, as appears by the record, charges the respondent with the commission of 15 distinct offences against the laws of the United States. Wherefore the respondent says that said count, with said bill of particulars, is bad for duplicity and insufficient to support a judgment.

WARREN F. PUTNAM,
By his attorneys, STREETER & WALKER.'

The court, after hearing, on Jan. 9, 1895, denied this motion and the defendant excepted."

WARREN F. PUTNAM.
FRANK S. STREETER, *Of Counsel.*

A true copy.
Attest: FREMONT E. SHURTLEFF, *Clerk.*

150 *Order for Supersedeas, February* 5, 1895.

Whereas lately sentence has been pronounced against said Warren F. Putnam under said indictment and a writ of error procured and served on the attorney of the United States for this district to reverse the judgment in this cause; and whereas a citation to the United States to be and appear at the Supreme Court of the United States pursuant to said writ of error has been issued:

It is ordered that the said writ of error operate as a stay of proceedings under said sentence, and that the execution thereof be superseded pending said writ of error.

By the court:

FREMONT E. SHURTLEFF, *Clerk.*

A true copy.
Attest: FREMONT E. SHURTLEFF, *Clerk.*

151 Circuit Court of the United States, District of New Hampshire.

Order for Bail Pending Writ of Error, February 5, 1895.

Whereas lately at the said circuit court sentence was pronounced against the said defendant, and the said defendant having obtained

a writ of error to remove the said cause to the Supreme Court of the United States to reverse the judgment therein, and a citation having been issued to the United States to be and appear at the said Supreme Court pursuant to said writ of error, which citation had been served upon the attorney of the United States for said district:

It is ordered that the said defendant be admitted to bail pending said writ of error, and that he recognize with sufficient surety in the sum of ten thousand dollars.

By the court:

FREMONT E. SHURTLEFF, *Clerk.*

A true copy.
Attest: FREMONT E. SHURTLEFF, *Clerk.*

152 UNITED STATES OF AMERICA, } *ss:*
New Hampshire District, }

At a circuit court of the United States begun and holden at Concord, within and for the district of New Hampshire, on the eighth day of October, in the year of our Lord one thousand eight hundred and ninety-four, to wit, February 5, 1895, in the case of The United States, by indictment, No. 479, *versus* Warren F. Putnam, defendant, personally appeared Warren F. Putnam, late of Exeter, in said district; Wm. A. Patten, of Kingston, in said district, and Everett S. Horton, of Attleboro, in the district of Massachusetts, and acknowledged themselves to be severally indebted unto the United States of America in the sums following, viz., the said Warren F. Putnam, as principal, in the sum of ten thousand dollars, and Wm. A. Patten, as surety, in the sum of ten thousand dollars, the said Everett S. Horton, as surety, in the sum of ten thousand dollars, to be levi-d on their goods or chattels, lands or tenements, and in want thereof upon their bodies, to the use of the said United States, if default be made in the performance of the condition following:

Whereas the said defendant has this day been ordered to be admitted to bail pending the writ of error issued in this cause, returnable to the Supreme Court of the United States thirty days from the date hereof:

Now, the condition of this recognizance is such that if the said Warren F. Putnam shall personally appear before the circuit court
of the United States within and for the district aforesaid
153 whenever required after the mandate of the Supreme Court
shall be received in this cause or whenever at other times ordered by this court to answer to such matters and things in the premises as shall be objected against him on behalf of the United States, and more especially to such judgment as shall be awarded against him therein, and shall do and receive that which by this court shall be enjoined upon him in relation to the premises and not depart without license, and shall meanwhile, from term to term and day to day, appear in this court whenever lawfully required in

relation to the premises, then the above obligation to be void and of none effect; otherwise to abide in full force, power, and virtue.

Attest: FREMONT E. SHURTLEFF, *Clerk.*

A true copy.
Attest: FREMONT E. SHURTLEFF, *Clerk.*

154 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of New Hampshire, wherein Warren F. Putnam is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edgar Aldrich, presiding judge at the trial, now holding the circuit court of the United States for the district of New Hampshire, this fifth day of February, in the year of our Lord one thousand eight hundred and ninety-five.

[Seal of Circuit Court, New Hampshire.]

EDGAR ALDRICH,
Presiding Judge.

155 [Endorsed:] United States *v.* Warren F. Putnam. Citation on writ of error.

I hereby accept service in behalf of the United States of the within citation.

Concord, N. H., February 5, 1895.

OLIVER E. BRANCH,
U. S. Dist. Att'y, Dist. New Hampshire.

Endorsed on cover: Case No. 15,846. New Hampshire C. C. U. S. Term No., 573. Warren F. Putnam, plaintiff in error, *vs.* The United States. Filed March 28, 1895.